

(2004) 03 SC CK 0017

In the Supreme Court Of India

Case No : Civil Appeal No. 2355 of 1999

Bharat Coking Coal Ltd.

APPELLANT

Vs

New Govindpur Coal Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 10(2), 21(8), 22, 22(6), 22(8)
Coal Mines Nationalization Law (Amendment) Act, 1986 — Section 10, 22
Companies Act, 1956 — Section 226, 617

Citation : (2004) AIRSCW 4690 : (2004) 2 BLJR 1264 : (2004) 5 JT 571 :
(2004) 3 SCALE 519 : (2004) 4 SCC 529 : (2004) 3 SCR 315 : (2004) 6
Supreme 129

Hon'ble Judges : R. C. Lahoti, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : Ajit Kumar Sinha, for the Appellant; S.B. Upadhyay, Rana S. Biswas
and Shiv Mangal Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Lakshmanan, J.—The above appeal, arising out of SLP (Civil) No. 11082/1998 was filed against the final judgment and order passed in Civil Revision Petition No. 225/1992 dated 23.09.1997 by the High Court of Judicature at Patna whereby the High Court dismissed the Civil Revision Petition.

BRIEF FACTS OF THE CASE ARE:

2. The appellant-company is a Central Government Company within the meaning of Section 617 of the Companies Act, constituted under the Coal Nationalisation Act in and around of Distt. Dhanbad in the State of Bihar.

3. The appellant company after formed by the Central Government was appointed as custodian on behalf of the Central Government to manage the Company's Coal mines, the management of which were taken over by the Central Government on enactment of the Coal Mines Act.

4. The intervening period i.e. between the 17.10.1971 to 30.04.1972 is known as Management period during which the management of such coal mines was with the appellant-company. During the said management period the Central Government used to advance money to the appellant-company for management of coal mines u/s 25 of Nationalisation Act, 1972. In the event the said amount of advance was not recovered from the income of the Colliery on account of Coal extracted the Central Government was empowered to make the claim before the Commissioner of payment under the said Act.

5. Prior to nationalisation, the New Govind Pur colliery used to be under the respondent and its income during the management period was insufficient to meet the expenditure of the said coal mine. It is the case of the appellant that during the management period, the appellant-company had actually incurred loss due to excess payment for which a claim for an amount of Rs. 15,21,320.32 was filed before the Commissioner of Payment.

6. The Central Government enacted Coking coal mines (Emergency Provisions) Act, 1971) hereinafter referred to as Act of 1971, where under the management of all the Coking coal mines in the country were taken over by the Central Government with effect from 11.10.1971.

7. The Central Government incorporated the appellant-company and directed that the management of the Coking coal mines was taken over under the Act, 1971 be carried on by the appellant-company.

8. The right, title and interest of the Coking coal mines in the country, the management of which were taken over under the Act, 1971 stood vested absolutely and free from all encumbrances in the appellant-company u/s 3 of the Coal Nationalisation Act, 1972, Under the said provisions of said Nationalisation Act, 1972 the Central Government was empowered to make recovery of the excess expenditure over receipts in the management of Coal Mines during the management period in terms of Section 25 of the said Act, which is set out as under:-

"Section 25 - Every amount advanced by the Central Government or the custodian as the case may be, for the management of a coking coal mine or coke even plant shall be recovered from the income derived by such coking coal mine or coke even plant in respect of the period during which the management of such mine or plant remained vested in the Central Government.

Provided that where such income is insufficient to meet in full the total amount of advance made by the Central Government or the Custodian for the management of the coking coal mine or coke even plant, the Central Government may make a claim to the Commissioner for the deficiency of the amount so advanced and the claim in respect of such deficiency shall have priority over the claims of all other unsecured creditors of the coking coal mine or coke over plant"

9. The claim so covered u/s 25 of the Act, was to be filed u/s 23 of the Act and

was to be supported by audited statement of account as proof of the claim drawn up in prescribed format as provided u/s 22 of the Act.

10. The appellant-company preferred a claim petition before the Commissioner of Payment for recovery of excess payment made to respondent which was registered as case No.9480/73 in the Court of the Commissioner of Payment, appointed under the Act.

11. The respondent No. 1 filed objections/rejoinder of the said claim of the appellant-company.

12. The Assistant Commissioner of Payment, before whom the claim case was preferred for adjudication on 19.12.1981, rejected the claim of the Central Government on the following grounds i.e.:-

(i) The appellant company failed to disclose the quantum of advance receipt from the Central Government during the management period.

ii) The appellant-company failed to submit the proof of the claim as total statement of account filed not supporting the claim cannot be accepted as a proof of claim u/s 23(4) of the Act.

iii) The appellant-company did not prefer P/L account of the later transaction, hence the amount submitted was not acceptable without individual item of the expenditure debited in the account and are not supported by voucher etc;

iv) Amount shown as spent during the management period in respect of salaries and wages of the workmen is exclusive.

v) Amount spent as shown in account books are not tenable.

vi) Amount has been spent subsequent to the Nationalisation of the mine and cannot be considered as an expenditure realisable to management of the mine.

vii) A detailed entry on account of interest in the statement of account amount be treated as advance received from Central Government.

viii) Amount debited in the account under the item of income tax not tenable being net proved.

ix) Amount spent on account of capital expenditure are no expenditure.

(x) Value of closing stock of coal not included in the receipt folio of the account.

13. u/s 23(10) of the Nationalisation Act, 1972 the appellant-company preferred an appeal against the order of the Assistant Commissioner of Payment which rejected the claim of the Central Government in its entirety in Misc. Appeal No. 29/82.

14. The Central Government enacted the Coal Mines Nationalisation Laws (Amendment) Act, 1986 with retrospective effect from 01.05.1972 in respect of Nationalisation Act of 1972 whereby and where under the related section on the

basis of which the Trail Court (the Asstt. Commissioner of Payment) passed an order were amended.

"Section 22:- Statement of accounts in relation to the period of management by the Central Government, etc. - (1) The Central Government or the Government company, as the case may be, shall cause the books in relation to each coking coal mine or coke oven plant, the management of which has been vested in it under the Coking Coal Mines (Emergency Provisions) Act, 1971 to be closed and balanced as on 30th of April, 1972, shall cause a statement of accounts, as on that day, to be prepared, within such time, in such form and in such manner as may be prescribed, in relation to each such mine or plant in respect of the transactions effected by it during the period for which the management of such coking coal mine or coke oven plant remained vested in it.

Provided that where two or more coking coal mines or coke oven plants were owned, before the commencement of this Act, by the same owner, a consolidated statement of accounts may be prepared for all the coking coal mines or coke oven plants owned by such owner.

(2) All amounts received by the Central Government or the Government company after the closure of such account shall, where such amounts related to transactions effected before the appointed day, be included in the said statement of accounts in respect of the coking coal mine or coke oven plant to which the said receipt relates.

(3) The Central Government or the Government Company in which the right, title and interest of the coking coal mine or coke oven plant stands vested shall be entitled to receive, upto the specified date, to the exclusion of all other persons, any money, due to the coking coal mines or coke oven plant, as the case may be, realised after appointed day notwithstanding that the realisations pertain to a period prior to the appointed day.

Provided that where such realisations have not been included in the statement of accounts as on the 30th day of April, 1972, a supplementary statement of accounts shall be prepared and furnished, at such intervals as may be prescribed, by the Central Government or the Government company to the owner of the coking coal mine or the coke oven plant, as the case may be.

(4) The liabilities of the coking coal mine or the coke oven plant (not being liabilities arising out of advances made by the Central Government or the Government company), which could not be discharged by the appointed day, may be discharged by the Central Government or the Government company up to the specified date out of the realisations, effected before or after the appointed day or out of advances or borrowings made up to the specified date and every payment so made shall be included in the statement of accounts as on the date immediately before the appointed day indicating therein the period in relation to which the payments were made and the payments so made shall not be called in question in any count:

Provided that the liabilities in relation to the period prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coking coal mine or the coke oven plant, as the case may be.

(5) A copy of each statement of accounts prepared under this section shall be delivered by the Central Government or the Government company, as the case may be, to the Commissioner and also the owner:

Provided that where the number of owners is more than one, only one copy of the statement of account shall be given to the owners for the benefit of all of them.

(6) The statement of accounts prepared under the section shall be audited by a person who is qualified to be appointed as an auditor of a company u/s 226 of the Companies Act, 1956, and the auditor so appointed shall receive, from the funds of the coking coal mine or coke oven plant, as the case may be such remuneration as the Central Government may fix.

(7) The audit of the statement of accounts shall be conducted in the manner as the Central Government may direct.

(8) The statement of accounts audited under Sub-section (6) shall, unless the contrary is proved, be conclusive proof in respect of every matter entered therein.

Explanation: For the purposes of this section, "statement of accounts" means a statement in the form of receipts and payments, and does not include any statement that may be prepared as a result of the closing and balancing of the books for the preparation of the profit and loss account and balance sheet or any statement prepared in accordance with the normal commercial practice."

"Section 25:- Recovery of excess payments made by Central Government or Custodian, - Any amount in excess of payments over receipts in the statement of accounts prepared u/s 22 shall be deemed to be an amount advanced by the Central Government or the Custodian, as the case may be, for the management of a coking coal mine or a coke oven plant during the period in which the management of such mine of plant remained vested in the Central Government and the Central Government may make a claim to the Commissioner for such excess payment and such claim shall have priority over the claims of all other unsecured creditors of the coking coal mine or a coke oven plant.

Explanation - In this section "Custodian" means the Custodian appointed under the Coking Coal Mines (Emergency Provisions) Act, 1971.

15. Similarly the amended act made it clear that the closing stock of coal has vested and thereby the value of the same is not to be incorporated in the side of the account folio.

16. On behalf of the appellant-company a petition was filed before the lower appellate court in the pending misc. appeal 29/92 for consideration of amended

provisions of the Nationalisation Act, 1986, inter alia, contending therein.

i) That the impugned order of the learned court is purely based on an unamended Sections as the said order was delivered on 31.12.1983.

ii) That it is apparent from the order of the learned court below that the court below has rejected the claim of the appellant in interpreting the section which have been amended and given retrospective effect. As for instance, the learned court below has reduced the claim under item (m) of the last page of the order while quantifying the amount to the extent of Rs. 2,34,994.00 on account of the value of closing stock of coal whereas by virtue of the amended Act it has been declared that the closing stock as on the date of vesting of the collieries in the Central Government has vested with the mine in the Central Government as the amount specified against the colliery includes the value of the closing stock of coal.

iii) That similarly the learned court below has held that the audited statement of account which has been filed by the claimant in support of the claim is not proof of the claim although the amendment has been made to the contrary that the entrees in the audited statement which is in the prescribed format shall be the conclusive proof unless contrary is proved. The onus to prove the entries has been shifted to the ex-owner Opp. Party. The entire claim of the claimant has been item-wise reduced on the basis of wrong interpretation of the terminology of "proof" which has been made clear by the amended act.

iv) That as a result of amendment of the Act by virtue of which the sections under which the claim has been preferred, the section under which payment has been made, there was no occasion for the learned court below to reject the claim of the Central Government represented by BCCL.

17. The lower appellate court dismissed the appeal on various other grounds.

18. On behalf of the appellant-company the Civil Revision bearing No. C.R.No. 224/92 (r) was filed in the High Court against the order of the lower court dismissing the appeal, inter alia, contending therein as under:-

(1) That the SLP (C) No. 10072/89 before the Supreme Court of India, was not similar to the present case as in the present case the coal related documents were produced from the trial court. In support of the entry made in the statement of account further, Section 22(8) of the Act puts the owner to disproof contrary to the entry made into the account and the respondents could not produce before the trial court any evidence to proof any of the entry made in the statement of account. Further the Trial Court rejected the claim not on fact but on the legal issue namely by interpreting the provisions. After amendment the interpretation made by the trial court was of no consequence as no legal issue remain good in view of the amendment so made. It was also averred in the Civil Revision filed before the High Court that the trial court failed to appreciate that the amended provisions of the Act clearly reflected in the petition filed before the

High Court dated 26.9.1891 subsequent to the amendment made in the parent Act by Act of 1986.

19. The Patna High Court passed an order dismissing the Civil Revision application as being devoid of merits.

20. Being aggrieved, the appellant has preferred the above SLP in this court. Leave was granted on 15.04.1999.

21. We heard Mr. Ajit Kumar Sinha, learned counsel for the appellant and Mr. S.B. Upadhyay, learned counsel for the respondent. Mr. Sinha contended that the courts below are not justified in not appreciating the provisions of the Coking Coal Nationalisation Laws (Amendment) Act, 1988 which was given retrospective effect and the amendments made in Section 22 and 25 of the Act and insertion of Section 22(8) and Section 10(2) in the Act settle and answer the reasoning of the trial court and the lower appellate court in rejecting the claim. He would further submit that the Central Government would be deprived of its legitimate claim amount invested in the management of coal mines during the period of such management pending nationalisation of the mines and that the High Court also is not justified in rejecting and dismissing the statutory appeal and revision application merely relying on a case which was not identical.

22. Arguing contra, Mr. S.B. Upadhyay, learned counsel for the respondent would submit that the judgment passed by the Trial Court and the Revisional Court cannot at all be assailed and that the well considered judgment of the courts below are not liable to be interfered with. The learned counsel further contended that in an identical case similar law points were involved in Claim Case No. 9418 of 1973 (BCCL v. Khas Mehtadih Coal Co.) wherein the auditor's report is similar as in the present case and the miscellaneous appeal was dismissed by the Additional District Judge after due consideration of the amendments made in the Amendment Act Against the said order, BCCL filed writ application which was dismissed by the High Court after hearing all the aspects of the amended provisions of 1985. Against the said judgment, the appellant came up before this Court in SLP (C) No. 10007/1989 in which the same questions were agitated but this Court heard and dismissed the SLP(C) No. 10007/1989 by its order dated 7.11.1989. Besides the above, the Appellate Court in its judgment dated 26.3.1992 in the Appeal No. 29 of 1982 of this SLP has rightly considered all the aspects of amendments made in Section 22 and 10 of the Coking Coal Nationalisation Laws (Amendment) Act, 1986 and has dismissed the appeal. Against the orders of dismissal of SLP(C) No. 10072/1989, the BCCL preferred a review petition which again was dismissed which facts have not been disclosed in the present SLP by the appellant.

23. We have perused the judgment passed by the Commissioner of Payments in Appeal No. 29/1982, order of the Additional Sessions Judge, Dhanbad in Civil Revision No. 225/1992 and the order passed by this Court in SLP (C) No. 10072/1989, this Court (.....three Judges Bench) while rejecting the claim of the

appellant therein has observed as under:-

"We have heard Mr. Sinha for the petitioner and Mr. Jain for the respondents. The petitioner mainly relies upon the provision of Section 22 (8) of the Coking Coal Mines (Emergency Provisions) Act, 1971, which provides: "The statement of accounts audited under Sub-clause (b) shall, unless the contrary is proved, be conclusive proof in respect of every matter entered therein."

This provision has been kept in view when the forums below rejected the claim of the petitioner. The auditors indicated in their report:

"So far as we understand the correct amount due to the owner or due from the owner cannot be calculated from the statement itself as prepared unless it is balanced and adjustment of stock of coal and coke taken over on 17.10.1971 end remained as dosing stock as on 30.04.1972 with other such adjustment for stores and capital expenditure etc. are credited to owner's account.

We are not fully satisfied with the maintenance of books of accounts. The statement is prepared, out of cash book transactions in a rough-sheet. No proper ledgering is done. The statement is compiled from rough sheet.

So far as the question of maintenance of stock account is concerned no day-to-day raising and dispatches accounts are maintained. No such books are maintained to verify the day-to-day manufacture and dispatches of coke accounts."

We do not think any view other than what has been done could be appropriate in the facts of the case.

The SLP is dismissed."

24. We have perused the grounds taken in SLP which, in our opinion have no merit because the management of Coking Coal Mines in India was taken over by the Central Government under the provisions of the Ordinance promulgated by the President of India known as Coking Coal Mines (Emergency Provisions) Ordinance on or from 17th day of October, 1971. Subsequently it was converted into an Act according to which the management of the mines were taken over but the ownership remained vested with the erstwhile owners till 30.04.1972. It is seen from the records that during the period of management i.e. from 17.10.1971 to 30.04.1972, this coal mine earned large profits and received huge accounts from sale proceeds from transactions prior to 17.10.1971 and from other sectors but could not and did not proper accounts of receipts and payments by keeping proper statements. Such statement of accounts were statutorily required to be audited by a qualified auditor in terms of Section 22 of the Coking Coal Mines (Nationalization) Act, 1972 (36 of 1972) by the enforcement of which the Coking Coal Mines were nationalized on and from 1.5.1972 and all the rights, title and interests of the erstwhile owners of the coking coal mines vested with the Central Government vis-a-vis to a Government company i.e. BCCL On the basis of the statement of accounts, the BCCL was authorized to prefer the claim

u/s 25 of the Act because such audited statements of account is conclusive proof of the claim unless contrary is proved. The fact remains that the appellant-company has failed to prove the contra as required u/s 22(8) of the Act. In this context, we may refer para (6) of the judgment dated 26.3.1992 of the Appellate Court which reads thus:-

"Sri Mallick, the learned advocate appearing for the B.C.C.L. claimant/appellant, in course of argument, could not meet aforesaid points raised on behalf of the respondent rather he had to concede that in a similar case the appellant claimants lost its claim right from the Court of Commissioner of Payment to the Hon"ble Supreme Court which has been referred by the learned counsel for the respondent, Sri Mallick, although tried his level best to assail the impugned order, but he could not refer any specific instance or cite any relevant papers which was not considered by the learned Asstt. Commissioner of Payments and in the circumstance, practically he has nothing to urge so as to allow this appeal. In the circumstances, Sri Mallick had to fairly concede that order of the court below cannot be set aside for the aforesaid reasons and points replied by the learned counsel for the respondents.

25. The auditor appointed by the appellant company itself could not be satisfied regarding the correctness of the account and the auditor statement of account failed in support of the claim of the Central Government. The auditor appointed by the appellant company itself could not be satisfied regarding the correctness of the account and the auditor statement of account filed in support of the claim of the Central Government was not accepted by any of the courts because there were certain baseless entries and hence the claim was rejected/dismissed by all the courts after due consideration of all the arguments advanced on behalf of the appellant. In the instant case, the mines have been nationalized in the year 1972 and if the respondent is made to pay the amount demanded after 26 years, the respondent will suffer immeasurable loss. The claim, in our opinion, cannot be admitted and the amounts cannot be relied upon because of the following specified defects and discrepancies:-

"(a) claimed amount could not be stated correctly at any time.

(b) Salary and wages could not be proved at least to the extent of Rs. 2,35,800.00.

(c) Bonus amount could not be approved and paid without any basis.

(d) Income tax paid on colliery income amounting to Rs. 81,967.00 could not be proved was not paid for the management purpose.

(e) Sales tax payment could not be proved.

(f) National defence fund to the extent of Rs. 6500/- wrongly claimed.

(g) Contractor's payment to the extent of Rs. 3,54,594/- could not be proved fully.

(h) Interest of Rs. 76,414 wrongly claimed.

(i) Head Office and Group Office expenses to the extent of Rs. 56,453.00 cannot be proved and also not required in connection with the management of the collieries and not authorized by law.

(j) Excess debit of Rs. 10,000/- in plant and machinery.

(k) Excessive claim in respect of stores.

(l) Discrepancies of stock of coal.

(m) Sales realization could not be proved nor accounted fully and wrongly adjusted.

(n) Advance of Rs. 2,34,594/- paid after 1.5.1992 and wrongly claimed as Central Government advance and last of all the doubtful nature of entry regarding cash balance.

26. The Lala & Company Chartered Accountants, Dhanbad, who are the auditors submitted their audit report and audit of statement of accounts u/s 22(6) of the Act, 1972 in regard to the respondent companies, it is seen from the report that the statement of accounts which were submitted to them were subsequently revised with necessary changes of error found during the course of their audit report. It is also observed in para (4) of the report which reads as follows:

"We, are not fully satisfied with the maintenance of books of account. The statement is prepared, out of cash book transaction in rough sheets. No proper ledgering is done. The statement is compiled from rough sheets.

So far as the question of maintenance of stock account is concerned no day-to-day raising and dispatches account are maintained. No such books are maintained to verify the day-to-day manufacture and dispatches of coke."

27. It is also observed under the capital statement of accounts that the Cashier or Manager has not signed the cash books on 16.10.1971 to confirm the balance on 16.10.1971.

28. When asked to explain why the custodian did not take over cash in hand of Rs. 64,800.04 on 17.10.1971 instead of cash of Rs. 288.73 only on 18.10.1971, the statement of accounts are revised by showing cash in hand as on 18.10.1971 at Rs. 288.78 which remark in the bottom. The difference of actual cash in hand of Rs. 64,800.04 and Rs. 288.78 which comes to Rs. 64,511.26 are adjusted by omitting the payments from the items of payments under the following heads:

Auditor's Report on 01.07.1973

1. Salary & Wages Rs. 57,970,76

2. Bonus A/c Rs. 1,712.66

3. Building Repairing Rs. 693.17

4. Stores A/c Rs. 424.00

5. Miscellaneous A/c Rs. 3,710.67

Total Rs. 64,51 1.26

29. In our opinion, this adjustment is not fair and we are not satisfied with the transaction and recommend for investigation of the entire transaction of this opening cash balance taken over.

30. Several other serious infirmities have also been pointed out by the auditors in their report in regard to C.W.P.F. Accounts, sales realisation, sales tax realisation, L.D.C.C. salary and wages, bonus account, royalty account etc. in the conclusion, it is mentioned that the result of physical takings on 17.10.1971 have not been shown to the auditors and the physical takings as on 30.4.1972 are differing with book figures as shown in this statement.

31. Thus, it is clear that the accounts statement in relation to the period of management by the appellant is not correct and the procedure prescribed u/s 22 of the Act, 1972 has not been followed at all. We, therefore, hold that the claim made by the appellant in its entirety is not maintainable and the order by the Commissioner of payment is self-explanatory which has been based on cogent reasoning covering all aspects of the matter. Likewise, the Appellate Court and the High Court in revision has rightly dismissed the claim of the appellant holding the appellant has failed to file required paper and proof to substantiate the claim. The appellant has also failed to comply the provisions of the Nationalisation Act, in particular, Sections 22 and Section 23 Sub-clause (4), (6) & (7) of the Nationalisation Act in the matter of filing of the proof in support of the claim. Although auditor's check of account as per insertion of Section 21(8) of the Nationalisation Act shall be the proof of the claim unless contrary is proved but the facts remains the auditor statement of account also did not support the case of the appellant and rather it goes in favour of the respondent in view of the fact that the respondent had proved the contrary to the entries and the court has also considered it and accordingly rejected the claim of the appellant after thorough examination and discussion. We see no merit in the appeal. The appeal stands dismissed. No costs.