

(1983) 04 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1072 of 1982 (R)

Bhuneswar Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-04-1983

Acts Referred:

Coking Coal Mines (Emergency Provisions) Act, 1971 — Section 2
Coking Coal Mines (Nationalisation) Act, 1972 — Section 21(1), 21(2), 22(2), 22(3), 22(4)
Constitution of India, 1950 — Article 226

Citation : AIR 1983 Patna 237

Hon'ble Judges : Hari Lal Agrawal, J; Abhi Ram Singh, J

Bench : Division Bench

Advocate : Shanti Bhushan, R.S. Merathia and R.K. Merathia, for the Appellant; Debi Pd. and A. Sahay, (for Nos. 1 and 2), Shambhu Prasad and Suresh Prasad, (for No. 3), S.B. Sinha, V. Shivnath, M.M. Banerjee and Indrani Choudhary, (for No. 4), for the Respondent

Judgement

Hari Lal Agrawal, J.—The petitioner No. 1, a partnership firm and owner of a coking coal mine known as Turiya Colliery before its nationalisation, has filed the present writ application claiming certain further payments from the respondents in relation to the period during which the management of their mine remained vested in the Central Government under the provisions of the Coking Coal Mines (Emergency Provisions) Act, 1971, and it also calls for an interpretation and true scope and ambit of the provisions of Sections 21 and 22 of the Coking Coal Mines (Nationalisation) Act, 1972.

2. On Oct. 17, 1971, the President promulgated the Coking Coal Mines (Emergency Provisions) Ordinance, 1971 to provide for the taking over by the Central Government, in the public interest, of the management of 214 coking coal mines and 12 coke oven Plants, including the coal mine in question, pending nationalisation of such mines. The Ordinance was replaced by the Coking Coal Mines (Emergency Provisions) Act, 1971. Thereafter, Parliament enacted the

Coking Coal Mines (Nationalisation) Act, 1972 to complete the process of nationalisation of the coking coal mines and coke oven plants. It was entitled as "An Act to provide for the acquisition and transfer of the right, title and interest of the owners of the coking coal mines specified in the First Sch. and the right, title and interest of the owners of such coke oven plants as are in or about the said coking coal mines with a view to reorganising and reconstructing such mines and Plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto".

The coal mine of the petitioner was listed under serial No. 70 in the First Sch. of the Nationalisation Act.

"Appointed day" u/s 2(a) of the Coking Coal Mines (Emergency Provisions) Act, 1971 was Oct. 17, 1971 while that u/s 3(a) of the Coking Coal Mines (Nationalisation) Act, 1972, is May 1, 1972.

The management of all other coal mines was taken over by the Central Government under the Coal Mines (Taking Over of Management) Act, 1973, and as already said earlier, the second step after the management came under the control of the Government was the actual nationalisation of the ownership itself by Act No. 26 of 1973. The sequence of events shows the evolution of national policy in this regard. Coking coal being absolutely essential was first taken over urgently and later on the management of the entire coal industry was taken over. Finally, the ownership of all the coal mines including coking coal mines was vested in the Central Government and in certain instrumentalities created by the Central Government. It is thus clear that the coking coal mines including that of the petitioner remained under the management of the Central Govt. during the period from Oct. 17, 1971 till April 30, 1972 For brevity I shall refer this period as the "management period". During this period the ownership of the coking coal mine continued to remain with petitioner No. 1 like all other mine owners, and the Central Government and/or its Custodian managed and worked the said coking coal mine for and on behalf of the owner. The profit and loss of the management period were put to the account of the owner himself.

3. I would now refer to some of the relevant provisions of the Nationalisation Act. The definition section defines various relevant items. Under Clause (f) thereof "Custodian means the Custodian appointed under subsection (2) of Section 14, to take over, or carry on, the management of a coking coal mine or coke oven plant. Section 14 talks of the authority in which the management etc. of coking coal mines etc. would vest and under Clause (b) of Sub-section (1) thereof the management of coking coal mines or coke oven plant, is to vest in one or more Custodians appointed by the Central Government under Sub-section (2). Clause (j) of Section 3 defines "mine" and in its very exhaustive and comprehensive definition in Sub-clause (xi) it also includes "all other fixed assets, movable or immovable, and current assets, belonging to a mine, whether within its premises

or outside." By an explanation appended to this provision it excludes from the purview of Current assets" dues from sundry debtors, loans and advances to other parties and investments, not being investments in the coking coal mine.

Chapter III of this Act deals with payment of amount to owners of coking coal mines specified in the First Schedule of the Act. It lays down that the owner of every coal mine(s) shall be given by the Central Government "in cash" and in the manner specified in Section 21, for vesting in it, u/s 4, the right, title and interest of the owner in relation to such coking coal mine or group of coking coal mines, an amount equal to the amount specified against it in the corresponding entry in the fifth column of the said Schedule.

The amount mentioned in the fifth column of the said Schedule for payment to the petitioners is Rs. 74,000/-. There is no dispute with respect to this amount.

Section 12 contemplates payment of some further amounts to the mine owner in consideration of the retrospective operation of the taking over besides some interest. There is no dispute in this regard either.

4. Now 1 come to the most relevant section, i. e., Section 21 which falls under Chapter VI of the Act. The chapter begins with Section 20 which contemplates the appointment of a Commissioner of Payments for the purpose of disbursing the amounts payable to the owner of the coal mines/plant. Section 21 consists of six sub-sections. Relevant for our purposes are only Sub-sections (1) and (2) which read as follows :--

"(1) The Central Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to the owner of a coking coal mine or coke oven plant, a sum equal to the sum specified against the coking coal mine or coke oven plant, as the case may be, in the First Schedule or the Second Schedule together with the amount and interest, if any, referred to in Section 12.

(2) In addition to the sum referred to in Sub-section (1) the Central Government shall pay, in cash, to the Commissioner, such amount as may become due to the owner of a coking coal mine or coke oven plant in relation to the period during which the management of the coking coal mine or coke oven plant remained vested in the Central Government."

Sub-section (1) clearly covers the sum specified in the First Schedule or the Second Schedule mentioned in Sections 10 and 12 of the Act already noticed earlier, and, as has been seen, there is no dispute regarding the payments contemplated under the provisions of those two sections. The claim of the petitioners is founded on the provisions contained in Sub-section (2) inasmuch as it specifically says that "such amount as may become due to the owner of a coking coal mine in relation to the management of the coking coal mine... .." shall be paid in cash by the Commissioner in addition to the sum referred to in subsection (1).

5. The case of the petitioners in this regard as made out in the writ petition is that according to the scheme of the Act the owners of the mines (in this case petitioner No. 1) were entitled/liable to the profit and loss of the management period, in addition to the (sum) referred to in Sub-section (1) which was a sum worked out with reference to the things existing on the date of the taking over of the management and the owner was also entitled to all the profits which the Custodian might earn out of the operation and transactions carried on during the period of the management of the mine for which he had to maintain an account in a Scheduled Bank. Section 22, according to the petitioners' contention, therefore, provides for maintenance of accounts separately for each coking coal mine, closing and balancing of the books of accounts and also for preparation of the statement of accounts" of the management period in the form prescribed by the Rules, namely, the Coking Coal Mines (Statements of Accounts) Rules, 1972.

Reliance in this connection has also been placed on Section 22 of the Act which talks of preparation of statement of accounts, as already stated above. Sub-sections (2), (3) and (4) of Section 22 are of some importance and may be quoted hereunder :

"(2) All amounts received by the Central Government or the Government company after the closure of such accounts shall, where such amounts relate 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, up to the specified date, to the exclusion of all other persons, any money, due to the coking coal mine or coke oven plant, as the case may be, realised after the 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 the advances made by the Central Government or 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, and every payment made for the settlement with the owner shall be included in the statement of accounts as on the 30th day of April, 1972, indicating therein the period in relation to which the payments were made;

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."

The statement of accounts for the management period prepared and filed by the Central Government have been made Annexures 1 to 10 to the writ petition and from those it has been shown that on the date when the Central Government took over the management, i.e. 17-10-1971, there was a stock of 5,650 tonnes of coking coal and 602 tonnes soft coke and the closing stocks on the last day of the management, i. e., 30-4-1972, were 30,411 tonnes of coking coal and 956 tonnes of soft coke over which total expenses of Rs. 9,32,357.93 were incurred for raising the further quantity. To this has been debited a further sum of Rs. 22,887.40 as expenses of capital nature for purchasing of a motor car.

Undisputedly the total quantity of 29,248 tonnes of coal was raised during the management period the rate of which works out to Rs. 31.10 per ton. Out of this quantity the Custodian could sell only 1,217 tonnes of coal and it is the price of this unsold coal which undisputedly has not been included in the statement of accounts prepared, as stated earlier, which is being claimed by the petitioners.

6. According to the stand of the respondents, the value of stock of coal as on 30-4-1972, i. e., the closing balance of the coal, was not to be taken into account for the purpose of balancing of the books of accounts and/or preparation of the statement of accounts. This is the real bone of dispute between the parties. According to the petitioners, the market value of the said 24,904 tonnes of coal even at the price fixed by the Central Government at the relevant time, i. e., at the rate of Rs. 34.28 per tonne would come to Rs. 8,52,463.92 and Rupees 21,476/- for 413 tonnes of soft coke at the rate of Rs. 52/- per tonne. This amount is being claimed by the petitioners from the respondents and their case is that they were entitled to be credited for the said sums while preparing the profit and loss accounts of the management period, particularly when the expenses for the raising of the said coal have been debited to their account.

7. It may be mentioned that according to the accounts prepared by the Government, without giving any credit for the quantity of the unsold coal mentioned above, a demand for Rs. 7,95,071.94 has been made from the petitioners and. Claim Case No. 6260 of 1973 has been filed before the Commissioner of Payments at Dhanbad (Annexure 17) for its realisation. According to the petitioners' case, if proper accounting is done, they would be entitled, to the contrary, to get Rs. 1,01,755.37 from the Central Government u/s 21(2) of the Act, The calculation made by the petitioners relating to the balance of Rupees 1,01,755.37 has been shown in an account prepared and filed as Annexure 19 to the writ application. It has been contended that if this method would not be adopted then it would result in hostile discrimination between different coking coal mines and the erstwhile owners of the various nationalised collieries, and simply on account of the improper attitude and negligence of the Custodian concerned some mine owners would suffer, in whose cases the stocks of coal were not sold away, thereby depriving the sale proceeds being credited to

their account and without giving any consideration for the unsold coal, thus taking away the benefit of the stock of coal lying unsold at the pit heads of the colliery. They have also annexed a chart (Annexure-15) to show as to how the other colliery owners have been given the advantage simply on account of the fact that the concerned Custodians diligently sold larger quantity of coal.

8. At the outset it has been mentioned by the petitioners that they were not challenging the vires of the Acts in this application, but later on they have referred to the pendency of such applications under Article 32 of the Constitution of India in the Supreme Court so much so that the petitioners themselves moved a similar application being W. P. No. 2756 of 1982 which was permitted to be withdrawn, to file an application in the High Court under Article 226. (Annexure 20).

9. Counter-affidavit has been filed only by the National Coal Development Corporation Ltd. (respondent No. 4), although some other respondents have appeared to contest the petitioners' claim. Some statements made in para 9 of this counter-affidavit may be usefully quoted :

"..... in addition to amount stated against Turiyo Coking Coal Mines, the petitioners were entitled to the profit if any which would have accrued during the period of management but in the present case it will appear from the statements of account and statements of supplementary accounts that no profit was earned rather the Central Govt. had to advance Rs. 7,95,071.94 more ..."

It has been further pleaded and also argued that inasmuch as the matter was pending before the Commissioner of Payments u/s 23, in the recovery proceeding the Commissioner had power to investigate into the claim of the petitioners and a regular forum was prescribed to pursue the claim under that procedure. They have denied any negligence or irregularity on the part of the Custodian.

The petitioners have filed a rejoinder to the counter-affidavit and more or less it is an assertion of their stand in the main writ application. Respondent No. 4, on its part, has also filed a reply to the rejoinder.

10. Mr. Shambhu Prasad, the learned counsel appearing for respondent No. 3, mainly argued that nothing separately could be paid to the petitioners on account of the unsold stock of coal. He referred to Sub-clause (xi) of Clause (j) of Section 3 of the 1972 Act where in the inclusive definition of the term "mine" all fixed and current assets have also been included. Mr. Prasad's argument was that inasmuch as by virtue of Section 4 of the Act all the right, title and interest of the owners in relation to the coking coal mines stood transferred and vested absolutely in the Central Government, with the "fixed assets" which were included in the definition of "mine" the stock of coal also automatically stood vested and no money was payable separately for those assets to the petitioners except the amount which could be payable u/s 21(1) of the Act.

11. At the outset I must mention that no decision touching this question was brought to my notice, nor could I find any decision of any High Court or of the Supreme Court which could give any assistance to answer the question. The cases which, of course, were referred, were Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, ; New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, ; and Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, .

I shall briefly refer to these cases hereafter, but before that I must also dispose of yet another argument advanced with some force by Mr. Shambhu Prasad, and that was the question of delay. It was argued that the question of calculation and the statement of accounts and the liability of the petitioners were determined as far back as in the year 1973 and, therefore, the present writ application being very much belated, must be dismissed on this ground alone, particularly when no objection was raised during all these years at any stage.

12. The reply given to this argument by Mr. Shanti Bhushan learned counsel appearing for the petitioners, was that the point of delay was not pleaded in the counter-affidavit and had it been pleaded, he argued, the petitioners would have set out the relevant facts to explain the delay, if any. He however contended that the petitioners were craving for the performance of the statutory duty of the respondents and for such a direction no time limit was fixed nor could be fixed. He also relied upon the order of the Supreme Court (Annexure 20) to contend that by an observation made therein the petitioners were allowed to file an application in this Court. But the argument that has impressed me to overcome the difficulty of the delay is that the vires of the Nationalisation Act itself was under challenge, for quite sometime and finally decided by the Supreme Court in Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, , and the petitioners could have reasonably waited till that time awaiting the result of that case. I would, therefore, overrule the argument of delay, laches advanced on behalf of respondent No. 3.

Before, however, dealing with the other argument advanced on behalf of respondent No. 3 I may also indicate the arguments which were advanced, and if I may say so, more forcefully, by Mr. S. B. Sinha, appearing for respondent No. 4. He also adopted one of the arguments of Mr. Shambhu Prasad that stock of coal cannot be separated from the mine for the purpose of determining the amount or money payable to the owner on account of the nationalisation of the coal mines.

13. It was next contended that the management period being an interim period, the Central Government or the Government company had not taken up the management of the mines with an intention of profit, making. Learned counsel, therefore, argued that by advancing the claim of the nature, the petitioners were actually asking this Court to determine the proper compensation on the basis of the market value of the properties in disguise which they could not otherwise do under Article 31 of the Constitution of India.

It was Mr. Sinha who had cited the case of Sanjeev Coke Manufacturing Co. AIR 1983 SC 239 where the main question was as to whether the 1972 Act was entitled to the protection of Article 31-C of the Constitution. In my view, therefore, this case has no relevancy to the question which falls for our determination.

Similarly, in Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, also the question of the validity of the Nationalisation Act was under challenge, as already said earlier. Para 19 of the decision in New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, was referred to show as to what actually did vest in the Central Government. In my view, there is no dispute on this question. This is a decision to lay down that a dispute as to whether a particular property vests or not is a civil dispute and must be resolved by a suit and could not be decided in their writ jurisdiction by the High Court.

Mr. Debi Prasad, appearing for respondent No. 1, the Union of India, did not advance any independent argument but simply adopted the arguments advanced on behalf of respondent No. 3.

As already pointed out earlier, I have got no decision or authority of any Court from which I could seek any guidance for recording my conclusions.

14. I now come straight to the main question. I have already indicated the essence of the arguments advanced on behalf of the respondents. It has already been seen that their main argument is that the stock of coal being an asset of a mine would automatically be deemed to have vested and, therefore, nothing could be claimed by the petitioners on that account separately. Extending this argument it was contended that under the terms of Section 21(2) which was the sheet-anchor of the petitioners' claim, the Central Government was obliged to pay to the Commissioner of Payments only if any amount was payable in cash, and inasmuch as the coal was not sold or, for that matter, could not be sold, that did not inflate the cash amount and, therefore, the petitioners were not entitled to any further payment.

15. I have given my anxious consideration to the arguments advanced by the learned counsel for both the parties and before I proceed to the discussions I may refer again to some further provisions of the relevant Ordinance and the Acts. In the first Ordinance of 1971 (No. 12 of 1971) dated 16th Oct., 1971, for taking over the management of the coking coal mines pending nationalisation, a provision for payment of compensation was made in Section 6(1). It stated as follows :

""Every owner of a coking coal mine shall be given by the Central Government compensation, in cash, for vesting in it, u/s 3, the management of such mine."

This provision was maintained verbatim in the Act which followed the Ordinance, namely, Act 64 of 1971. There are certain other data indicating the mode of calculation of the amount payable to a mine owner in this regard. That is

however, not relevant for our purposes and suffice it may to state that the basis of the computation is the quantum of monthly production of the coal in the preceding four years. Under the Nationalisation Act when the mines were completely acquired payments were to be made to the mine owners for deprivation of their property by the Central Government as provided u/s 10 which, in its turn, refers to the manner specified in Section 21(1) of the Act and the fifth column of the Schedule. I have already referred to the provisions contained in Section 12 and I need not detain myself on these questions. From this I conclude that what is contemplated for payment by the Central Government to the Commissioner of Payments for the purpose of disbursing the amounts to the owner of each coking coal mine or oven plant, was in the nature of something like compensation for the compulsory acquisition which might take into its fold all that was available on the date of the nationalisation, i. e. 1st of May, 1972 (giving a retrospective date), although the Act was published on 17-8-1972. I feel no doubt in the least inasmuch as Section 21 read with, Section 10 clearly visualises the payment on account of the vesting u/s 4 of the Act and, therefore, even if the argument of the learned counsel for the respondents is accepted, then the petitioners, perhaps, may not claim separately the price of the stock of coal which was lying at the pit head on account of the extensive and inclusive definition of the word "mine". But it is difficult to accept the argument that the coal which was not raised from the mines and which was raised during management period by incurring heavy expenditure, in this case about more than Rs. 8,00,000/- should also be deemed to have vested u/s 4 simultaneously. The fallacy of the argument can be well perceived that on the date of the vesting the coal which was subsequently raised was not even in existence and even the inclusive definition of the expression "mine" cannot be construed to embrace in its fold and the expression "fixed assets movable or immovable", the future accretion or addition during the management period. In the preamble of the 1971 Act it was mentioned that the management was being taken over in the public interest pending nationalisation with a view to reorganise and reconstruct the coking coal mines and coke oven plants for the purpose of protecting, conserving and promoting scientific developments, of the resources of coking coal needed to meet the growing requirements of the iron and steel industry. In the judgments of the Supreme Court there is long discussion regarding the necessity of maintaining the proper supplies to the iron and steel industries of this essential source of power and energy. I, therefore, need not enter into those discussions.

16. After the taking over of the management, therefore, it was contemplated that the mines would be worked on, of course under the supervision of a Custodian or a Manager in place of the erstwhile mine owners for the purposes mentioned above. In carrying out the mining operations the Custodians, therefore, became responsible for running the coking coal mines and coke oven plants. There is no gain saying that the basic feature of managing a mine is the raising of the minerals in the instant case, the coking coal, and the Custodian

managing the petitioners" colliery extracted huge quantities of coal spending huge amount running to the extent of more than Rs. 8,00,000/- and also raised sufficient quantity of coal by that process. The scheme of Sub-section (2) of Section 21 read with Section 22 contemplates that separate accounts in relation to the period of management has to be kept by the Custodians just like any business house. The scheme of sub-section (2) of Section 21, to my mind, was intended to make the owners of the mines entitled to the fruits of the management carried on his behalf by the Custodian and the Central Government was bound down by the Legislature to pay in cash, to the Commissioner of Payments, such amount as may become due to the owner of a coking coal mine or coke oven plant in relation to the period during which the management remained vested in the Central Government. The expression "in cash", to my mind, cannot be construed to mean that only that could be payable which had turned into cash and which remained unconverted into cash could not become due to the owner of a coking coal mine. It was conceded before us at all hands that had the Custodian sold away the coal of the mine in question, then the petitioners would have become entitled as a matter of course and right to be credited to that extent. I fail to understand as to on what logic, if in a given case one Custodian sells away the stock thereby giving advantage to that mine owner, in the other case where the Custodian is unable or fails to act accordingly the benefit of the stock would be completely lost to the mine owner. It cannot be held that the subsequently raised coal during the period of management could be said to vest u/s 4 of the Act. Taking any other view, in my opinion, would result in discrimination and arbitrariness.

Similarly, it is difficult to understand as to why the cash amount which was diminished for purchasing a motor car and thus increasing the capital asset should not be accounted for to the benefit of the petitioners. Otherwise a Custodian could have squandered away or spent the entire cash balance towards capital expenditure in purchasing lands, buildings, plants and machineries etc. or invested in other development projects and the like, and thus would bring the cash balance to nil. The prescribed form of the statement of accounts to be prepared and submitted by the Custodian (Annex. 12) also clearly indicates that all informations of this nature were intended to be furnished by the Custodian. It was rightly, therefore, contended that there could be no possible reason for calling for such detailed information in the statement of accounts.

17. Although it was not argued by the learned counsel for the respondents, it has struck me that if an argument would have been possibly made that the coal which was extracted from the mine which had already vested, the extracted coal from such a mine would also form part of the property of the Government and the petitioners could not lay any claim over that, this argument could have been understandable. But if that could be the stand then obviously for raising the said coal from the mine which was taken over by the Government, the expenditure incurred for raising the said coal in no case could be debited to the petitioner"s account. It has already been seen that whereas on the one hand the Government

wants to realise the cost of raising of the coal in question, on the other hand, it wants to deprive the petitioners of the resultant benefit of the said expenditure. I find it impossible to reconcile myself with this contradictory attitude. It would be nothing else than to allow to blow hot and cold in the same breath. I would accordingly accept the contention of the learned counsel for the petitioners that the petitioner No. 1 must be given the credit and benefit of the entire stock of coal which was raised during the management period and also for the amount which was spent for purchasing the motor car in question.

18. The argument with respect to the alternative forum available to the petitioners u/s 23 of the 1972 Act also has to be disposed of. Section 23 deals with the claims of third parties against the owner of a coking coal mine or coke Oven plant The claim of the owner himself if any, against the Government cannot be made before the Commissioner. The argument on this score advanced by the learned counsel for the respondents is, therefore, entirely misconceived and erroneous.

19. I would accordingly direct the respondents to prepare a fresh statement of accounts after balancing the value of the aforesaid assets. I do not want to fix the rate at which the quantity of coal should be valued. It will be for the competent authorities to value the same at the rate which can be said to be admissible for the quality of coal of the petitioners, or such other method or basis which might be adopted in law for that purpose.

20. The application is accordingly allowed to the extent and subject to the observations made above. In The circumstances, however, I shall leave the petitioners to bear their own costs.

Abhiram Singh, J.

I agree.