

(1963) 05 PAT CK 0004

In the Patna High Court

Case No : Misc. Judicial Case No. 1069 of 1962

Bishwanath Prasad

APPELLANT

Vs

National Coal Development Corporation (Private) Ltd.

RESPONDENT

Date of Decision : 23-05-1963

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4
Mineral Concession Rules, 1949 — Rule 37

Citation : AIR 1963 Patna 401

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : P.R. Das, K.D. Chatterji and Brajkishore Prasad II, for the Appellant;
Govt. Advocate and Bindabashini Prasad Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Untiwalia, J.—The case of the petitioner, Bishwanath Prasad, is that he is "the owner, proprietor and purchaser of Dhodidih Colliery situate within the Sub-Divisional area of Giridih in the district of Hazaribagh". He claims to have purchased the said colliery from the Bengal Coal Company Ltd., by a registered indenture of sale dated 22nd November, 1956, On the date of his purchase,

"the Colliery was a going concern raising coal of grade 111-B as per tonnage granted to it and the petitioner who hold (sic) a certificate of Approval granted to him by the State of Bihar under the Mineral Concession Rules, 1949. after purchase continued raising coal from the said Dodidih Colliery."

The petitioner made an application on the 19th of January, 1957, to the Coal Board, Calcutta, for permission to open four seams of the said Dhodidih Colliery. The Coal Board by its order dated 10th October, 1957, refused permission to work the colliery and by another order dated 24th of February, 1958, withdrew Grade III-B fixed for the colliery on the ground that no such quality of coal was required from the area. After the orders aforesaid were made by the Coal Board, the petitioner entered into correspondence with it and pressed his claim for

permission to reopen the said colliery in view of the heavy losses he was undergoing for the maintenance of the establishment. The Coal Board, however, went on postponing the matter and finally wrote to the petitioner on the 15th November, 1960, that it would consider the matter after the Government instructions were received. The petitioner thereupon filed a representation to the Ministry of Steel, Mines and Fuel which acknowledged receipt of the petitioner's letter dated 6th of June, 1961, by its letter dated the 9th of June, 1961. Finally the petitioner wrote a letter dated 11th August, 1961, through his advocate, and demanded justice from the authority. Eventually, by a letter dated 23rd of November, 1961, the Ministry of Steel, Mines and Fuel, informed the petitioner that the Dhodidih Collieries appeared to have been notified under Sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (Act XX of 1957) published in the Gazette of India dated 8th July, 1961. The petitioner thereupon wrote a letter dated 6th December, 1961 to the Ministry of Steel, Mines and Fuel, Government of India, protesting against the issue of the notification aforesaid and praying to exclude his colliery from the operation of the notification on the ground that the Colliery was a running concern until it stopped functioning by an arbitrary and unlawful order of the Coal. Board. Copies of the two letters aforesaid dated 23-11-61 and 6-12-61 are annexure C to the writ application.

2. The petitioner's further case is that on the 5th of December, 1961, the respondent. National Coal Development Corporation (Private) Ltd., in collusion with other authorities, namely, the Coal Board and others, commissioned a large number of men to take forcible possession of the colliery. Therefore, the petitioner filed a writ application in the Calcutta High Court which was registered and numbered as Matter No. 378 of 1961, against the Coal Board and others to restrain them from being in occupation of the Dhodidih colliery and. from entering upon it. The Calcutta High Court issued a rule on the 21st December, 1961, and by an order dated 20th of September, 1962, issued an ad interim injunction restraining the Chairman of the Coal Board from taking any steps in the matter of taking possession of Dhodidih colliery. A copy of the said order is annexure D to the writ application. According to the petitioner's case, no rule could be issued against the present respondent as it is beyond the territorial jurisdiction of the Calcutta High Court. Hence the petitioner by making the present application under Article 226 of the Constitution of India has obtained a rule against the respondent to show cause why a writ in the nature of mandamus be not issued directing it to withdraw, rescind or forbear from giving effect to the notification issued u/s 4(1) of Act XX of 1957. The petitioner has also prayed for an appropriate writ restraining the respondent and/or its servants from further continuing to be in occupation of, or entering upon, Dhodidih colliery of the petitioner. Cause has been shown by the learned Government Advocate on behalf of the respondent, on behalf of which ft counter-affidavit also has been filed.

3. Mr. P. R. Das, learned counsel for the petitioner, submitted in support of the rule that the impugned notification dated the 1st July, 1961, which is annexure

"A" to the counter-affidavit of the respondent is illegal, and ultra vires as under Sub-section (4) of Section 4 of Act XX of 1957 it was incumbent upon the Central Government to exclude from the notification the land comprised in the petitioner's colliery because coal mining operations were actually being carried on in the said land until they were stopped by the arbitrary and illegal orders of the Coal Board. Counsel submitted that by forcing the petitioner to close the mines and stop the mining operation by the said illegal orders, the Central Government could not take out the petitioner's colliery from the imperative exclusion as directed by the said provision of law. The learned Government Advocate, in reply, contended, firstly, that no coal mining operations were actually being carried on in the land comprised in the petitioner's colliery at the time of the notification or even since long prior to that; and secondly, even if they were actually being carried on, they were not carried on "in conformity with the provisions of any enactment, rule or order for the time being in force."

4. The relevant portion of the impugned notification reads thus -

"..... Whereas it appears to the Central Govt. that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed :

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 4 of the Coal, Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein.

x x x

"Sl. No. Village Thana No. District Area in acres Remarks.

1 2 3 4 5 6

4 Dbodidib... Qiridih. 193 Hazaribagh 43.00 Part.

The map of the area can be inspected at the office of the National Coal Development Corporation Ltd., Rev. Sec. Darbhanga House Ranchi or at the office of the D. C. Hazaribagh (Bihar)."

Section 4 of Act XX of 1957 says -

"(1) Whenever it appears to the Central Government that coal is likely to be obtained from land in any locality, it may, by notification, in the official Gazette, give notice of its intention" to prospect for coal therein.

(2) Every notification under Sub-section (1) shall give a brief description of the land and state its approximate area.

(3) On the issue of a notification under Sub-section (1), it shall be lawful for the competent authority and for his servants and workmen -

(a) to enter upon and survey any land in such locality;

- (b) to dig or bore into the sub-soil;
- (c) to do all other acts necessary to prospect for coal in the land;
- (d) to set out the boundaries of the land in which prospecting is proposed to be done and the intended line of the work, if any, proposed to be made thereon;
- (e) to mark such boundaries and line by placing marks; and
- (f) where otherwise the survey cannot be completed and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so.

4. In issuing a notification under this section the Central Government shall exclude therefrom that portion of any land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force or any premises on which any process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations is being carried on are situate."

The constitutional validity of the enactment aforesaid was tested by the Supreme Court in the case of Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, and it was held to be valid. The argument of Mr. P. R. Das advanced before the Supreme Court on behalf of Burr-akin Coal Co., that Sub-section (1) of Section 4 must be so construed as to apply to unworked land only, was repelled, and it was held -

"On the plain language of Sub-section (1) of Section 4 the Central Government has been empowered to issue a notification with reference to its intention of prospecting any land in a locality and not only such land as is virgin in the sense in which Mr. Das uses that expression."

The broad argument advanced before the Supreme Court could not again be and was not advanced before us. But our attention was drawn to a passage in the judgment of the Supreme Court at page 958 (column) 2 which reads thus -

"Thus if a colliery was not functioning at the date of the notification then by virtue of the provisions of Section 5(b) he would not be permitted to work it. Undoubtedly the provision has to be interpreted reasonably and it does not mean that if the notification came into force on a Monday and the mine was not worked on Sunday because of a holiday, the lessee was prohibited by the notification from working it. The resumption of working of a mine after a casual closure or a closure in the ordinary course of working a mine would not fall within the bar created by Section 5(b) So what must be said to have been prohibited would be the undertaking of an operation on land not for the first time only but also the

resumption of an operation which had been abandoned or discontinued.""

5. It was submitted on behalf of the petitioner that since after his purchase he was working the mine and was obliged to stop only after the two orders aforesaid were made by the Coal Board, hence on a reasonable interpretation of the provision of law it cannot be held on the facts and in the circumstances of this case that the mining operation had been abandoned or discontinued by the petitioner. That being so, counsel submitted, the Central Government in exercise of its power u/s 4(1) could not include the land comprised in the petitioner's colliery as it had got to be excluded under Sub-section (4) of the said section. It is, therefore, necessary to be seen if it is factually correct.

6. In paragraph 8 of the counter-affidavit filed on behalf of the respondent it is stated -

".....the area covered by the notification u/s 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, does not include any portion of any land in which coal mining operations were actually being carried on at all, especially in view of the fact that the mine had been admittedly closed in March, 1948, as the petitioner himself admitted in his application filed before the Coal Board for permission to reopen the mines, and it is further submitted that even if it were to be assumed that the petitioner was carrying on some coal mining operation upon any portion of the said land, then he was certainly not doing so in conformity with the provisions of the relevant Acts, Rules and Orders governing the matter."

In his affidavit-in-reply, the petitioner has merely said -

"3. That the statements in paragraph 8 of the petition of the respondent are not correct. It is totally false to say that no coal Mining Operations were actually being carried on, nor was it a fact that the Coal Mine was closed in March, 1948. The real fact is that the colliery has never been closed".

It is important to note, however, that the petitioner has not expressly denied the fact stated in the counter-affidavit that in his petition filed before the Coal Board for permission to reopen the mines he had admitted that they were closed since March, 1948. The only petition referred to in paragraph 4 of the writ application is the one dated 19th January, 1957 in which paragraph it has been said that the Coal Board wrongly took it as an application for reopening the colliery. Yet not only the statement in the counter-affidavit of the respondent with reference to the said application has not been denied but a copy of the said application has also not been filed either with the main application or with the affidavit-in-reply. It is further significant that the petitioner has not filed the copies of the orders of the Coal Board dated 10th of October, 1957 and 24th February, 1958, nor has he filed a copy of the writ application filed by him in the Calcutta High Court in order to show as to on what statements and grounds the orders of the Coal Board have been challenged there. No prayer has been made in the present writ application for declaring either order of the Coal Board as illegal or ultra vires on any ground.

In such a situation, it is difficult to believe that the petitioner's application dated the 19th January, 1957, filed before the Coal Board, Calcutta, a few months after his purchase of the colliery in November, 1956, was not an application for reopening of the colliery under Rule 39 of the Coal Mines (Conservation and Safety) Rules, 1954, framed under the Coal Mines (Conservation and Safety) Act, 1952 (Act XII of 1952), the working whereof had been discontinued for a period exceeding 6 months. Although the petitioner has withheld the copies of the relevant applications and the orders which, if filed, in my opinion, would have clearly shown that the working of the coal mine in question had been discontinued for a long period prior to the filing of the application on the 19th of January, 1957, the inference of fact drawn by me above finds support from the letter dated 24th May, 1960, (annexure B to the writ application). In the said letter addressed to the Chairman of the Coal Board, it has been said that on one plea or the other "the required permission for reopening of our above colliery has not been granted us till now". In the penultimate paragraph of the letter, it has been said by the petitioner -

"Since 1956 when we purchased the above colliery from M/s. Bengal Coal Co., Ltd., we have been spending a large sum of money in maintaining for the above colliery a high-salaried Mines Manager and other staff, and also for the necessary upkeep of the mines thus undergoing heavy losses without any return from the Colliery. Unless the reopening permission is granted us soon the undersigned will be doomed."

7. I am, therefore, of the view that even on a most liberal and reasonable interpretation of Sections 4 and 5 of Act XX of 1957, it must be held that the working of the mine had been abandoned or discontinued long before the purchase of the mine by the petitioner and it was not a case of "casual closure or a closure in the ordinary course of working mine". Nor was it a case of a land in which coal mining operations were actually being carried on on the date of the impugned notification. To my mind it is a case where the petitioner wanted permission from the Coal Board to reopen the mine but the Board refused the permission on one ground or the other, the validity of which has not been attacked before us. I cannot accept the argument put forward on behalf of the petitioner that he was actually obliged to stop the mining operation in view of the alleged, illegal order or orders of the Coal Board. It is, therefore, clear that the land comprised in the petitioner's 3 colliery, in respect of which the notification u/s 4(1) of Act XX of 1957, has been issued by the Central Government was not the land in which coal mining operations were actually being carried on on the date of the notification. The notification of the Central Government was perfectly valid and legal and it was not obliged to exclude the land comprised in the petitioner's colliery from the said notification.

8. Even if it be assumed in favour of the petitioner that the coal mining operations were actually being carried on on the day the notification u/s 4 (1) of Act XX of 1957 was issued by the Central Government, it is clear, as I shall

presently show, that they were not so carried on in conformity with the provisions of the Mineral Concession Rules, 1949, framed under the Mines and Minerals (Regulation and Development) Act, 1948, (Act LIII of 1948) read with Section 29 of the Mines and Minerals (Regulation and Development) Act, 1957 -- (Act, 67 of 1957). It is claimed on behalf of the petitioner that the transfer of the mining lease in his favour was not affected by Rule 37 of the said Rules but was covered by Rule 48. Chapter IV of the Rules, in which Rule 37 occurs, is headed "Grant of Mining lease in Respect" of Land in which the Minerals belonged to Governor", and Rule 37 provides. -

"The lessee may, with the previous sanction of the State Government and subject to the conditions specified in the first proviso to Rule 35 and in Rule 38, transfer his lease or any right, title or interest therein, to a person holding a certificate of approval on payment of a fee of Rs. 100 to the State Government -

Provided that no mining lease or any right, title or interest therein in respect of any mineral specified in Schedule IV shall be so transferred except with the previous approval of the Central Government."

The heading of Chapter V in which Rule 48 occurs is "Grant of Mineral Concession by Private Persons" and Rule 48 reads thus -

"No prospecting license or mining lease to which the provisions of this Chapter shall apply or any right, title or interest in such license or lease shall be transferred except to a person holding a certificate of approval from the State Government having jurisdiction over the land in respect of which such concession is granted.

Provided that no prospecting license or mining lease or a right, title or interest in such license or lease in respect of any mineral specified in Schedule IV shall be transferred except with the previous approval of the Central Government".

The petitioner claims that he was holding a certificate of approval from the State Government as required by Rule 48 and had derived good title to the colliery by the indenture of sale executed in his favour in November, 1956. It is, however, to be remembered that the estate where the lands comprising the colliery are situate had admittedly vested in the State of Bihar under the Bihar Land Reforms Act prior to the transfer in favour of the petitioner. Section 9 of the Bihar Land Reforms Act provides -

"(1) With effect from the date of vesting all such mines comprised in the estate or tenure as were in operation at the commencement of this Act and were being worked directly by the intermediary shall, notwithstanding anything contained in this Act, be deemed to have been leased by the State Government to the intermediary and he shall be entitled to retain possession of those mines as a lessee thereof. (2) The terms and conditions of the said lease by the State Government shall be such as may be agreed upon between the State Government and the intermediary or in the absence of agreement, as may be

settled by a Mines Tribunal appointed u/s 12:

Provided that all such terms and conditions shall be in accordance with the provisions of any Central Act for the time being in force regulating the grant of new mining leases."

Where immediately before the date of vesting of estate or tenure there was a subsisting lease of mines or minerals comprised in estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease, u/s 10 (1) of the Bihar Land Reforms Act, from the date of the vesting, shall be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder becomes entitled to retain possession of the lease-hold property, subject to the terms and conditions of the lease as provided in Sub-section (2) of Section 10. In any view of the matter, therefore, on the vesting of the estate where the land was situate the lease in favour of the petitioner's transferor became a statutory grant of mining lease in respect of the land in which the minerals belonged to Government and hence Rule 37 of the Mineral Concession Rules, was attracted and became applicable to the transfer in favour of the petitioner. Admittedly, the transfer was not made with the previous sanction of the State Government as required by the said rule nor with the previous approval of the Central Government as required by the proviso to that rule (coal is a mineral specified in Schedule IV of the Rules). Hence the transfer was illegal.

9. The validity of Rule 37 of the Mineral Concession Rules, 1949, made under Act LIII of 1948 may be open to challenge on the ground that Section 6 and 7 of the said Act did not empower the Central Government to make a rule of the kind as engrafted in the said rule. But there can be no doubt that the Central Government is empowered to make such rule u/s 13(2)(1) of Act 67 of 1957. u/s 13(1) the Central Government has been empowered to make rules for regulating the grant of prospecting licenses and mining leases in respect of minerals and for purposes connected therewith. Sub-section (2) with Clause (1) reads thus:

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

x x x (I) The manner in which, and the conditions subject to which a prospecting licence or a mining lease may be transferred."

I shall now read Section 29 of Act 67 of 1957;

"All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948, shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act."

In State of Bihar v. Indian Copper Corporation Ltd. 1960 BLJR 105 my lord the

Chief Justice delivering the judgment of the Bench dealt with the various provisions of Act 67 of 1957, and referred with approval the principle which would be applicable for interpretation of Section 29 of the Act, as laid down in the judgment of the Bombay High Court in Abdul Majid Haji Mahomed Vs. P.R. Nayak, . The object of Section 29, therefore, is, as it were to antedate Act 67 of 1957 so as to bring it into force on the day on which the Minerals Concession Rules of 1949 were made. It is thus manifest that the validity of Rule 37 of the said Rules is now not open to challenge. On the basis of the legal aspect as stated above, it is not disputed that the transfer in favour of the petitioner would be illegal and even if the coal mining operations were actually being carried on by him on the 1st of July, 1961, the date of the impugned notification, they were not so carried on in conformity with the provisions of the Mines and Minerals (Regulation and Development) Act and the Mineral Concession Rules. It was, however, submitted on behalf of the petitioner that Act 67 of 1957 had come into force on 28-12-57 and the relevant provisions of Act XX of 1957 came into force on 12-6-57, and the petitioner's purchase of the colliery being prior to those dates was not unlawful and illegal as it was in accordance with Rule 48 of the Mineral Concession Rules, 1949. For the reasons stated above, this argument has got to be rejected.

10. Another argument put forward by the learned Government Advocate was that the petitioner did not hold a certificate of registration or license as required under the Industries (Development and Regulation) Act, 1951, and hence he was not carrying on the coal mining operations, if any, in conformity with the enactment. In reply, our attention was drawn on behalf of the petitioner to a letter of the Central Government in the Ministry of Commerce and Industry dated 14th April, 1960, (Part of Annexure A to the writ application) wherein it was mentioned that since the number of workers employed in the petitioner's undertaking was less than 100 and the value of fixed assets was also less than 10 lacs, he was not required to obtain a license under the said Act. I do not propose to discuss and decide this point as, in my opinion, the petitioner is not entitled to grant of a writ in this case as either of, or both, the ground discussed and decided hereinbefore.

11. In the result, the application fails and is dismissed with costs; hearing fee is assessed at Rs. 250/- only.

Ramaswami, C.J.

12. I agree.