
(2003) 12 JH CK 0051

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4819 of 2003

Central Coalfields Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 368

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Mehta, Anand Sen and A.K. Das, for the Appellant; Mahesh Tiwari, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner Central Coalfields Limited has challenged the order/direction dated 15.6.2003 issued by respondent No. 5 namely. Jharkhand State Pollution Control Board directing the petitioner to help private respondent No. 6 to remove the slurry from plot No. 836P, 837, 839P, 840 and 841P and further quashing the memo issued by Deputy Collector Incharge, Bokaro to Officer-in-Charge, Gumla Police Station directing him to give all possible assistance to respondent No. 6 in removing slurry from the land.

2. Petitioner's case is that on the application filed by respondent No. 6 before Govt. of India Ministry of Forest and Environment stating therein that in his raiyati land since 15 years shiny has been deposited and he may be allowed to remove the same, the Minister vide letter dated 8.3.2002 allowed respondent No. 6 to lift the slurry from his land. Thereafter, vide letter dated 27.3.2002 the Central Government wrote to the petitioner to implement the aforesaid order dated 8.3.2002. Petitioner then received letter dated 15.6.2003 issued. by. Regional Officer Jharkhand State Pollution Control Board (in short State Pollution Board) directing the petitioner to allow respondent No. 6 to remove slurry from his land. Petitioner claims that the land of the aforesaid plot does not belong to

respondent No. 6 and the same belongs to the petitioner upon which slurry is being deposited / stored.

3. Mr. A.K. Mehta, learned counsel for the petitioner submitted that the land comprised within the aforementioned plots have been acquired by the petitioner vide notification dated 3.11.1971 under the Coal Bearing Areas (Acquisition and Development) Act, 1957. According to learned counsel, therefore, respondent No. 6 has no right to remove the slurry from the land belonging to the petitioner and the direction issued by respondents vide impugned orders are illegal and wholly without jurisdiction and also violative of principles of natural justice.

4. Mr. Mahesh Tiwari, learned counsel for respondent No. 6 on the other hand submitted that respondent No. 6 by virtue of registered power of attorney acquired right title and interest over the land in question, he is entitled to remove slurry from the land. Learned counsel submitted that on the direction issued by the Central Government the petitioner was directed by the respondents to remove the slurry from the land in question.

5. On the basis of the pleadings of the parties, the first question that needs consideration is whether the land of the aforementioned plots owned and possessed by respondent No. 6 and whether he has acquired valid right title and interest over the said land. It is specific case of the petitioner-Central Coalfields Ltd. is that the land was acquired as far back as in 1971 by virtue of notification issued under Coal Bearing Areas (Acquisition and Development) Act and since then said plots are held and possessed by the petitioner and on these plots slurry is being deposited.

6. In the counter affidavit filed by respondent No. 6, it is stated that by registered power of attorney executed by Sri Sahdeo Nayak and Sri Chandradeo Nayak he has been given power of right title and interest over the said plots. Curiously enough, neither the copy of registered power of attorney nor the document of transfer has been annexed with the counter affidavit. On the contrary, it appears that in 1990, the said respondent No. 6 Amrit Singh filed writ petition by way of public interest litigation being CWJC No. 4304/90. In the said petition prayer was made for issuance of writ, order or direction directing the Chairman of Bihar State Pollution Control Board to stop flow of slurry from the Swang Coal Washery to the raiyati lands of the petitioner and further for a direction to the respondents for bidding them from creating disturbance or obstruction against the petitioner so as to prevent him from removing the slurry deposited in the raiyati lands. The writ petition, was dismissed by Division Bench of Patna Court in terms of the judgment and order dated 18.11.1991. Copy of the Judgment has been annexed as Annexure 5 to the writ application, paragraph 6 of the judgment is worth to be quoted herein under :

"The case of the petitioner is that he took the land in question on lease from one Sahdeo Nayak and Chandra Deo Nayak the recorded tenant of the land, for the purpose of cultivating the land. It appears that the land was not fit for cultivating

at the relevant time, because even according to the case of the petitioner he has to, remove the slurry/sludge before the land can be made culturable. We cannot lose sight of the fact that the petitioner is a native of Punjab and carries on business at Dhanbad in coal slurry and briquettes etc. His claim that he took the land on lease for the purpose of cultivation, appears to be far from truth, and we say so only on the basis of conjecture but on the basis of the record. It appears that the petitioner has filed another writ petition before the High Court of Judicature at Calcutta being C.O. 15309 (W). 1988 in connection with the same lands in which he has stated that he is dealer in slurry and briquettes made out of slurry deposited on the self same plots. Similarly from Annexure 4, which is an order issued by the S.D.O. Tenughat, it appears that, the petitioner had applied before him saying that he had taken the land on lease for dealing in slurry/sludge etc. which had settled on that land. We have, therefore, no doubt that the petitioner has taken the land on lease particularly for a commercial purpose, namely for the purpose of collecting sludge/slurry from the land which he wishes to sell in the market for personal gain. Obviously the petitioner could not have directly asked for such relief from any court of law, having regard to the decision of the Supreme Court reported in 1990 (4) SCC 557. The Supreme Court overruling the Full Bench decision of this Court has held in clear terms that sludge/ slurry discharged from a coal washery is also coal. Power to make rules and regulation therefore vested in the Central Government and no one else. As a consequence neither to settle from the Govt. of Bihar nor an under raiyati claiming settlement from a raiyati can claim the right to remove the slurry/sludge which have been discharged from a coal washery. This writ petition in our mind, seeks to achieve indirectly that which could not be, achieved directly. It is for this reason that this petition was filed as a public interest litigation even though the objection was personal gain. Whatever be the method adopted by the petitioner calculated to obtain an order or direction for removal of such sludge/slurry from the lands in question, this Court must refuse to grant a relief which may authorize the petitioner to commit a breach of the law. We make it clear that the petitioner cannot claim any direction from this court forbidding the respondents from obstructing him from removing sludge/slurry from the plots of land in question. If the petitioner persists in doing so without authorization from the Central Government in accordance with law the authorities may be justified in taking appropriate action against the petitioner."

7. It appears that after the aforesaid judgment was delivered by the Patna High Court the said respondent No. 6 approached the Government department particularly Ministry of Forest and Environment, Government of India representing that slurry has been deposited in his land and he may be allowed to remove the same. The Central Government without application of mind with regard to the procedure for granting permission for mining activities and without hearing the petitioner/Central Coalfields Ltd. issued impugned letter directing the petitioner to allow respondent No. 6 to remove slurry from the land. On the basis of the said letter of the Central Government the State Pollution Control Board

issued similar direction which is evident from the counter affidavit filed on behalf of Pollution Control Board. Paragraph 7 of the counter affidavit is reproduced herein below :

"We may also notice that the lease in favour of the petitioner annexure 1, was for a period of one year only which expired on 15.9.1986. By order dated 28.10.1991 we had directed the petitioner to produce evidence to satisfy us that he had a subsisting interest in the land. This became necessary because there is no even an agreement in the writ petition that the lease was renewed or a fresh lease was granted. The petitioner has produced no material to satisfy us that he has a subsisting interest In the land in question. Counsel for the petitioner submitted that by operation of law, the petitioner became a permanent tenant. The proposition is doubtful, but we do not propose to investigate that question."

8. From these facts, it can be safely held that neither the petitioner acquired any right title or interest over the land in question nor he is entitled to remove the slurry from those plots of the land. Consequently, the impugned letter issued, by respondents directing the respondents to allow respondent No. 6 to remove slurry from the plots in question is wholly without jurisdiction and cannot be sustained in law,

9. For the aforesaid reasons, this writ application is allowed and the impugned orders are quashed.