

(1969) 02 CAL CK 0004
In the Calcutta High Court
Case No : Civil Rule No. 836 (W) of 1966

Central Kooridih Colliery Company and another	APPELLANT
Vs	
Coal Board and others	RESPONDENT

Date of Decision : 06-02-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 73 CWN 434

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : D.P. Pal and Ranendra Nath Dutt, for the Appellant; P.N. Chunder, for the Respondent

Judgement

D. Basu, J.—The petitioners seek to have a writ of prohibition restraining the respondents from continuing the proceedings of the criminal case started on the basis of complaint dated the 7th day of July, 1965 which is at annexure "K" to the petition. That complaint is one of contravention of Rules 39(4) and 39(5) of the Rules made under Coal Mines (Conservation and Safety) Act, 1952. These Rules made in 1954 and herein referred to as "the Rules". The complaint in substance is that the petitioners have made an admixture of different grades of coal in contravention of the provisions in the part of sub-rule (4) of Rule 39 of the Coal Mines and Safety Rules, 1954, which is as follows:

No two grade of coal shall be mixed before despatch without the prior permission in writing of the Board.

Whether the two grades of coal have been in fact mixed or whether the Board's permission was in fact taken are matters to be determined in the criminal proceeding. In this Court the petitioners can succeed in obtaining a writ of prohibition only if it is established that the criminal proceeding lacked jurisdiction or contravened any of the essential principles of natural justice and the like. The

grounds up on which the petitioners rely are two fold, firstly, that the complaint was made after holding what is known as an "off-set survey", while, according to the petitioners, the Board could take only a "wagon sample" under sub-rule (3) of Rule 39. But upon a reading Rule 39 it is quite clear that the sign for taking a sample from wagon is made for a definite object, viz. to make final what is known as provisional grading on the basis of seam sample, made under sub-rules (1) and (2) of Rule 39. The power of the Board to make off-set survey to determine whether there has been an admixture of two grades of coal is to be drawn from the other provisions and on this point my attention has been drawn to the provisions in sections 6 and 7 of the Act which are very wide. I do not think that the criminal proceeding would be lacking in jurisdiction because instead of taking a wagon sample of the coal of the petitioners' colliery the respondents obtained the sample by some other means.

2. The second point taken on behalf of the petitioners is that sub-rule (4) or (5) of Rule 39 cannot apply in any case where sub-rule (1) of the Rule was not applicable. Sub-rule (1) of the Rules no doubt relates to opening and re-opening of coal mines, which according to the sub-rule can take place only with the prior permission of the Board. This Rule came into force in 1954 and admittedly in the instant case the mine in question was opened before 1954. It is accordingly argued that sub-rules (4) and (5) can be attracted only in those cases where the coal mine has been opened subsequent to the coming into force of this Rule in 1954. Before coming into the question of construction of different portions of sub-rule (4) a patent anomaly on behalf of the petitioners can be pointed out. That anomaly is that if this argument is accepted, while it would be an offence of admixture of different grades of coal in a case of mine opened after 1954 it would be no Prodi-offence in respect of a mine which had been opened before 1954 and the Board would be powerless to take any action against such an act, though the object of the Act and the functions entrusted to the Board are patently the maintainable of public interest, in matters of survey of coal and safety in coal mines.

3. Upon the question of construction reliance has been placed on behalf of the petitioners upon a decision of this Court in the case of Banwarilal Agarwala Vs. The Coal Board, , where it has been laid down that the provision in sub-rules (2), (3) and (3-A) and (3-B) of Rule 39 are dependent upon sub-rule (1). What happened in that case was that after a mine had been opened before the coming into force of the Act or the Rules, the Board sought to re-grade their coal by the application of Rule (3-A). There is no doubt that this could not be done because the very word "regarding" suggested that the grade determined under the Rules could not be altered. If, therefore, no grading had initially been made under sub-rule (1) of the Rules, the question of "regarding" could not arise. The only question that we have now to consider is whether sub-rule (4) or sub-rules (4) and (5), which were not dealt with in the case reported in Banwarilal Agarwala v. The Coal Board, (supra), are also limited to the scope of sub-rule (1) as suggested on behalf of the petitioner. The only material relied upon on behalf of

the petitioners is the marginal note of Rule 39 which is "opening and reopening of coal mines" but, as has been laid down in various cases, the marginal note cannot override the express provision of a section in an Act or statutory instrument. From a reading of Rule 39, which is a subordinate statutory instrument, I might be of the opinion that the penalty portion in sub-rule (4) or (5) could better have been segregated and placed under a different Rule but, for the matter of that, it cannot be held that the scope of sub-rule (4) or (5) should be cut down to restrict their application only in those cases where the colliery itself opened after the coming into operation of the Rules. As I see, the offence in this case, namely, the admixture of two grades of coal can take place in any colliery, whether opened before or after the coming into force of the Rules. I cannot, therefore, accept the contention advanced on behalf of the petitioners that the criminal proceeding in question lacked any initial jurisdiction merely because of the fact that the colliery in this case was opened before 1954. Beyond these observations I cannot go further in this proceeding under Article 226 of the Constitution, to prejudice either of the parties in the criminal case.

4. The Rule is accordingly discharged but the petitioners may have recourse to a proceeding under Article 226 of the Constitution, if so advised, on lawful grounds after the criminal proceeding is disposed of. There will be no order as to costs.