
(2003) 01 JH CK 0118
In the Jharkhand High Court
Case No : LPA No. 546 of 2002

Director General of Mines and Safety and Others	APPELLANT
Vs	
D.L.F. Power Ltd.	RESPONDENT

Date of Decision : 15-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Mines Act, 1952 — Section 2

Citation : (2003) 2 JCR 80

Hon'ble Judges : Vinod Kumar Gupta, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : M.M. Prasad, for the Appellant; M.M. Banerjee A.K. Das and J. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

1. With the consent of the parties, this appeal is taken up for final disposal, without formally admitting it.

2. It appears that the respondent (M/s. DLF Power Ltd.) entered into an agreement with Coal India Ltd. for installation of Power Plants on the land leased to it by Coal India Ltd. The Power Plants were meant for supplying electrical power to the Mines run by two Subsidiary Companies of Coal India Ltd., namely, Central Coal Fields Ltd. (CCL) and Bharat Coking Ltd. (BCCL). On 4.1.1999 the respondent wrote a letter to the Chief Labour Commissioner (Central), Ministry of Labour, Government of India, New Delhi seeking a clarification to the effect that the aforesaid power plants installed by the respondent would come within the definition of "mine" as occurring in Section 2(j) of the Mines Act, 1952 and thus being covered by the Mines Act, 1952 it be treated as a "mine" and not a "factory" with the definition of this expression as occurring in the Factories Act. The operative part of the aforesaid communication dated 4.1.1999 reads thus :--

"We would therefore be grateful if in view of the unanimous legal opinion received, clarification is issued to the concerned authorities at the Centre as well

as the State of Bihar that our plants will be covered under the Mines Act and will be under the jurisdiction of the Central Government."

Apparently in an earlier part of the same letter, respondent, relying upon the opinion of the Legal experts, conveyed to the Chief Labour Commissioner (Central) that its power plants did not come within the definition of "factory" as contemplated under the Factories Act. This part of the letter reads thus :--

"We have checked up the matter with the legal experts and they all are of the opinion that our captive Power stations at Rajarappa, Giddi and Madhuband will be covered under the Mines Act and not the Factories Act. Copies of the legal opinions are enclosed. It may be noted that one of the legal experts is Labour Advisor of PHD Chambers of Commerce and Industry, which is one of premier Employers Organization in North India. Our Chief Manager-Personnel and Administration has been writing to Regional Labour Commissioner Central to provide clarification on the issue. Copies of the letters are enclosed."

3. Even while the correspondence between the respondent and the Labour Ministry might have been going on, apparently on a reference made by the Labour Ministry to the Director General of Mines Safety, vide communication dated 13th July, 1999, the Director General of Mines Safety informed the Regional Labour Commissioner (Central), Dhanbad that exclusively a Power Station supplying power to a mine may be considered as "a part of the mine" but it could not be considered as a "mine" within the definition of Section 2(j) of the Mines Act 1952 and, accordingly, it was conveyed by the Director General of Mines Safety (DGMS) to the Regional Labour Commissioner (Central) that the Respondent's Establishment could not be considered as a "mine" as contemplated by the Mines Act, 1952. It shall be advantageous to refer to the entire text of this letter, which runs thus :--

"Sub : Clarification regarding establishment of DLF Industries Ltd. Working at Rajrappa Project and Giddi Washery of M/s. CCL and Madhuband Washery of M/s. BCCL.

Sir,

Please refer to your letter No. RLC-PA/98 dated 5/10th May, 1998 on the subject.

The matter has been considered carefully in this Directorate. The provisions of Section 2(j)(IX) of the Mines Act, 1952 regarding Power Station can not be considered in isolation. It has to be considered along with the definition of "Mine" in Section 2(j) of Mines Act, 1952 which is as follows :--

""Mine" Means any excavation where any operation for the purpose of searching for or obtaining mineral has been or is being carried on."

Thus exclusively power stations can be considered as part of the mine and not the "Mine" by itself.

In view of the above establishment of DLF industries Ltd. referred to in Your

letter can not be considered as "Mine" and are not covered under the Mines Act, 1952."

It is this letter (dated 13th July, 1999), which was challenged by the respondent before the learned Single Judge in CWJC No. 1370 of 2000. The learned Single Judge by quashing this letter held that the DGMS was not correct in law in holding that the Respondent's Power Station could not be considered as "mine." It is against the aforesaid Judgment that the Appellants have filed the present appeal under Clause 10 of the Letters Patent.

4. In course of the judgment the learned Single Judge made a reference to Section 82 of the Mines Act, 1952 by observing that if the Respondents in the writ application disputed the installation or construction of the Power Station as not being covered by the expression "mine" they are at liberty to get this issue decided by the Central Government in terms of Section 82 of the Mines Act, 1952.

5. Mr. M.M. Prasad learned counsel appearing for the Appellants submitted that actually Section 82 of the Mines Act is a provision which gives ample and plenary powers to the Central Government to decide each and every question and issue concerning the definition or the meaning of the term "Mine." Section 82 of the Mines Act, 1952 reads thus :--

"82. Decision of question whether a mine is under this Act--If any question arises as to whether any excavation or working (or premises in or adjacent to and belonging to a mine, on which any process ancillary to the getting, dressing or preparation of sale of minerals or of coke is being carried on) is a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point."

6. While the hearing of the case was going on we made a pointed query to Mr. M.M. Banerjee, learned counsel appearing for the respondent as to why did the respondent have to seek any clarification from the Labour Ministry to the effect that its installation being declared as a "Mine", because, according to the respondent, it thought that the establishment does not come within the definition of a "factory" as occurring in Section 3 of the Factories Act. The purpose of making this query from Mr. Banerjee was to elicit the real intention and motive of respondent by, first seeking the aforesaid clarification and later on moving this Court under Article 226 of the Constitution for seeking appropriate relief in the aforesaid direction. Even though Mr. Banerjee did try to offer some argument or explanation, apparently it appears to us that the respondent was trying to somehow or the other get itself out of the scope of the Factories Act, because for the reasons best known to the respondent it did not want itself to be covered by the definition of "factory" as occurring in the Factories Act and, therefore, it apparently sought the aforesaid clarification and declaration from the Ministry of Labour. We therefore feel that apparently the respondent did not have any cause of action to file the writ application because seeking a mere declaration or a

clarification without any tangible or intrinsic link being the basis of such declaration or clarification does not amount to the accrual of any cause of action so as to maintain a petition under Article 226 of the Constitution. We are afraid we can not help observing that perhaps the respondent did not fully come clean on this score.

7. Secondly and importantly, it can also be said that in so far as the impugned communication dated 13th July, 1999 is concerned, the respondent also perhaps did not have any cause of action to maintain the writ application because the impugned communication was inter se between the Director General of Mines Safety and the Regional Labour Commissioner. The impugned communication was not addressed to the respondent nor was its copy endorsed to it. If at all, the Regional Labour Commissioner or the Chief Labour Commissioner ultimately would or would not rely upon the impugned communication in deciding the Respondent's request for clarification perhaps at a later stage could ultimately, if at all, have given rise to a cause of action to the respondent but as is seen that did not happen and the respondent rushed to this Court assailing the impugned communication even though it was not addressed to it. The minimum that can be said on this score is that the writ petition was premature.

8. Apart from the aforesaid aspects relating to the maintainability of the writ petition, we have a very doubt whether looking to the definition of the "mine" as occurring in Section 2(j) of the Mines Act, 1952 petitioner's installations do fall within the meaning, scope and purview of "mine" as defined u/s 2(j) of the Act. The relevant extract of Section 2(j) of the Act read thus :--

"2(j) "mine" means excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes-

xx xx xx xx xx xx xx

(ix) all power stations, transformer Sub-stations, convertor stations, rectifier stations and accumulator, storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

xx xx xx xx xx xx xx"

9. The respondent was relying upon the expression "Power Station" as occurring in Clause (ix) of Section 2(j) of the Act to canvass its point of view that the installation was a "mine." However, the learned Single Judge appears to have not taken notice of the expression "under the same management" as occurring in Clause (ix) (supra). If proper meaning is given to the expression "under the same management" apparently it may give rise to a situation where an appropriate authority may have to give a declaration or issue a clarification that the Respondent's installation does not come within the definition of the "mine."

10. Lastly, we may deal with the contention of Mr. Prasad that the issue, the question, or the dispute as forming the subject matter of the writ petition should

have been referred to the Central Government for its adjudication and decision in terms of Section 82 of the Act. We have extracted Section 82 of the Act earlier. A bare reading of Section 82 perhaps may be suggestive of an interpretation that in an adjudication or a decision upon any question whether any excavation or working or premises is a mine within the meaning of the Mines Act or not, the sine qua non may be that the excavation, or the working, or the premises should be adjacent to and belonging to a mine. What should be the exact meaning of the expression "adjacent to" or "belonging to a mine" would be indicative of the real scope and application of Section 82. Our first Impression is that perhaps looking to the aforesaid expressions in a situation where the installation of the respondent (Power Station) admittedly belong to the respondent and do not belong to a mine, perhaps, strictly speaking Section 82 may not have any application at all. However, we are not expressing any opinion finally nor finally deciding this question in this appeal because of the non-maintainability of the writ application under first two counts as held by us in the earlier part of this judgment. We leave this interpretation open but within observation that if at all the respondent thinks or feels that in the facts and circumstances of this case Section 82 of the Act is attracted, it shall be open to it to invoke this provision and make appropriate representation to the Central Government. If this is done we leave it open to the Central Government to decide whether in the facts and circumstances of this case Section 82 is at all attracted or not, or whether the Central Government has the jurisdiction to decide the question or the issue as forms the subject matter of the writ application.

11. For the foregoing reasons, there fore, this appeal is allowed and the judgment under challenge dated 6.8.2002 as passed by the learned Single Judge in CWJC No. 1370 of 2000 is set aside with all consequences, but without any order as to costs.