

(1998) 09 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 899 of 1989 (R)

Employees in relation to Industry Colliery of Bharat Coking Coal Ltd. APPELLANT

Vs

Their Workmen rep. by Akhil Bhartiya Koyla Kamgar Union and Others RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25H

Citation : (1999) 47 BLJR 292 : (1999) 82 FLR 667 : (1999) 2 LLJ 242

Hon'ble Judges : R.A. Sharma, J;B.P. Sharma, J

Bench : Division Bench

Advocate : M.M. Banerjee, S.K. Laik and A. Sen, for the Appellant; Kalyan Roy and Mahesh Tiwari, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—The Central Government referred the following dispute u/s 10 of the Industrial Disputes Act (hereinafter referred to as the Act) to the Central Government Industrial Tribunal, Dhanbad (hereinafter referred to as the Tribunal), for adjudication:-

"Whether the action of the management of Industry Colliery of Messrs. Bharat Coking Coal Limited in refusing employment to 111 workmen listed in the Annexure below was justified? If not, to what relief are the said workmen entitled?

The Tribunal answered the said reference in favour of the workmen holding that the Bharat Coking Coal Limited, being a successor- in-interest of the Industry Colliery as well as Bhuggatdih Colliery, has statutory obligation u/s 25H of the Act to re-employ 111 workmen and its refusal to do so was not justified.

2. The submission of the learned counsel for the petitioner is that the Bharat Coking Coal Limited (hereinafter referred to as the BCCL) is neither the employer

of the workmen within the meaning of Section 25H of the Act, nor it is a successor-in-interest of the two collieries, namely, Bhuggatdih Colliery and the Industry Colliery (which have been described by the parties as Bhuggatdih Rise Area hereinafter referred to as the collieries). This submission has been disputed by the learned counsel for the respondents.

3. The Parliament enacted Coking Coal Mines (Emergency Provisions) Act, 1971 (hereinafter referred to as the Emergency Provisions Act), which provided for taking over of the management of the Coking Coal Mines by the Central Government from the appointed day i.e. October 17, 1971. Thereafter Coking Coal Mines (Nationalisation Act), 1972 (hereinafter referred to as the Nationalisation Act) was passed, whereby and whereunder on the appointed day, i.e. May 1, 1972 the right, title and interest of the owners in relation to the Coking Coal Mines specified in the First Schedule stood transferred to and vested in the Central Government free from all encumbrances. Section 7 of the said Act empowered the Central Government to direct by an order in writing, that the right, title and interest of an owner in relation to a coking coal mine, shall, instead of continuing to vest in the Central Government vest in the Government Company from such date as may be specified in the direction. The collieries in which 111 workmen were working were also nationalised under the Nationalisation Act and by virtue of the Government order, the right, title and interest in the collieries were vested in the Government Company known as BCCL.

4. The admitted position is that these 111 workmen who were in the employment of the collieries, were retrenched by their erstwhile employer owning those collieries on June 9, 1971, i.e. even before the Emergency Provisions Act came into force on October 17, 1971 on which date the management of the Coking Coal Mines was taken over by the Central Government. They accepted the retrenchment compensation and did not raise any dispute as regards their retrenchment. But several years after their retrenchment they raised the dispute regarding their reemployment under BCCL, which as mentioned before, was referred by the Government to the Tribunal, which has answered the reference in favour of the workmen.

5. Section 17 of the Nationalisation Act provides for continuity of employment of the workmen even after the Nationalisation on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to them, if the right in relation to the Coking Coal Mines had not been transferred to and vested in the Central Government or the Government Company, as the case may be. The Supreme Court in *The Workmen Vs. The Bharat Coking Coal Ltd. and Others*, has held that Section 17 of the Nationalisation Act protect not only the workmen, who were on roll of the erstwhile employers of the Coking Coal Mines on the appointed day May 1, 1972, but also the workmen, who had been dismissed/discharged or retrenched from service before the appointed day and whose dismissal/discharge/ retrenchment has been set aside, with a direction for their reinstatement with continuity of

service. The resultant position is that the workmen, who were in employment of the appointed day i.e., May 1, 1972, as well as the workmen, who were dismissed/discharged/ retrenched from service before the said date and whose dismissal/discharge/retrenchment has been set aside by the competent authority with a direction for their reinstatement with continuity of service, are the workmen of the Government Company in which the assets of the coking coal mines, of which they were the employees earlier, have vested. In the instant case these 11 workmen were retrenched on June 9, 1971 and thus they were neither in employment to the appointed day on May 1, 1972 nor their retrenchment was set aside by any Court or Tribunal. They were thus neither workmen of the BCCL nor are they entitled to be deemed to be its workmen.

6. The BCCL in the instant case cannot also be said to be the successor-in-interest of the old, in respect of the business of collieries in which these workmen were working till June 9, 1971. By operation of Section 4 of the Nationalisation Act, the right, title and interest of the owners in relation to the coking coal mines stood transferred to and vested in the Central Government, free from all encumbrances. By the said Act only the assets of the owner in relation to Coking Coal mines were transferred to and vested in the Central Government, but the Central Government was not made liable for any liability of the owner of the said mines. Section 9 of the Nationalisation Act has specifically laid down that the Central Government shall not be liable for any liability of the owner, agent, manager, or managing contractor of a coking coal mine in relation to any period prior to the appointed day (May 1, 1972) and such liability will be the liability of such owner, agent, manager or managing contractor as the case may be.

7. The Apex Court in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, has laid down the various tests in order to find out as to whether the purchaser of an undertaking can be said to be successor-in-interest of the seller. In this connection the relevant passage from paragraph 9 of the judgment of the Apex Court is reproduced below:-

"The question as to whether a purchaser of an industrial concern can be held to be a successor-in-interest of the vendor will have to be decided on a consideration of several relevant facts. Did the purchaser purchase the whole of the business? Was the business purchased a going concern at the time of the sale transaction? Is the business purchased carried on at the same place as before? Is the business purchased carried on without a substantial break in time? Is the business purchased carried on as the same or similar to the business in the hands of the vendor? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it? What is the length of the break? Has goodwill been purchased? Is the purchase only of some parts and the purchaser having purchased the said part purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it. These and all other relevant factors have to be borne in mind in deciding the question as to whether the

purchaser can be said to be a successor-in-interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasise in this connection that though all the facts to which we have referred by way of illustration are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the presence or absence of any one of them is decisive of the matter one way or the other...."

In the instant case only the right, title and interest of the coking coal mines have been acquired by the Government under the Nationalisation Act free from all encumbrances. The Government has neither taken over any liability of the owners of the said mines nor has it acquired their goodwill. Normally if a person does not acquire both the assets and liabilities of the business of another person, he cannot be declared as the successor-in-interest of the latter unless provided otherwise by the statute or the contract under which the assets have been taken over. In the instant case the Nationalisation Act, under which the assets of the mines have been acquired, does not provide otherwise. There is also no contract between the Government and the owners of the collieries providing otherwise. The Government has acquired a large number of coking coal mines, including the mines in question, list of which is contained in the Schedule appended to the Nationalisation Act and has started its own business spread over large areas covering several mines which is not the same as the old business. The Government or the Government Company as the case may be, cannot, therefore, be said to be the successor-in-interest of the old business.

8. The Tribunal has declared the BCCL as the successor-in- interest of the business of the erstwhile owners of the collieries holding that "the business carried on by M/s. BCCL is similar to the business carried on by Bhuggatdih Colliery and Industry Colliery and there is no break in the continuity of business. Similarity of business by itself cannot make the Government as the succcssor-in-intercst. This question has to be decided on the basis of the relevant factors and the statutory provisions. But that has not been done by the Tribunal. The BCCL was neither the employer of those workers nor is it the successor-in-intercst of the old business of the collieries in which they were employees. It has therefore, no obligation to re-employ them. Section 25H of the Act cannot be applicable to such a case. The Award of the Tribunal cannot be sustained.

9. This writ petition is allowed and the Award of the Tribunal dated June 30, 1988 as published in the Gazette and dated October 29, 1988 in Reference Case No. 49 of 1983 is quashed. No cost.

B.P. Sharma, J.

I agree.