

(2014) 09 GAU CK 0035

In the Gauhati High Court

Case No : Writ Petition (C) Nos. 4807/2008 and 110/2009

Ledo Sonali (Gaon) Pathar Parichalana Samity

APPELLANT

Vs

The Coal India Limited
 North Eastern Coalfield Vs The
State of Assam

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : (2014) 09 GAU CK 0035

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : M.Z. Ahmed, Sr. Advocate, B. Dutta, Sr. Advocate, A.M. Dutta, R. Chetia, I. Imsong, A.B. Choudhury, Sr. Advocate, H. Hoque, S.A. Choudhury, K. Deka and S. Dey, Advocate for the Appellant; H.M. Phukan, Govt. Advocate, A.B. Choudhury, Sr. Advocate, S.A. Choudhury, S. Dey, J. Rahman, M.Z. Ahmed, Sr. Advocate, B. Dutta, Sr. Advocate, A.M. Dutta, R. Chetia and I. Imsong, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J.—Heard Mr. MZ Ahmed, learned senior counsel appearing for the North Eastern Coal Field of Coal India Ltd. (hereinafter referred to as "the Coal Company"), who has filed the WP(C) No. 4807/2008. The contesting party i.e. Ledo Sonali (Gaon) Pathar Parichalana Samity (hereinafter referred to as "the Claimant Society") have filed the connected case i.e. WP(C) No. 110/2009 and they are represented by the senior counsel Mr. AB Choudhury. Both cases pertain to the decision dated 7.8.2008 of Addl. Dy. Commissioner, Tinsukia, whereby crop damage caused through open cast mining between 1989--2006 was assessed at Rs. 2,98,31,308/- (Rupees two crore ninety eight lakh thirty one thousand three hundred eight).

2. In the first case, the Coal Company challenges the legality of the damage assessment and in the analogous case, the claimants seek direction for disbursal of the assessed compensation. As both matters are analogously heard, the

following common order is passed. For the sake of convenience, the facts are noted from the WP(C) No. 4807/2008, filed by the Coal Company.

BACKGROUND FACTS

3.1. The coal bearing area in Ledo region of Tinsukia District vested on the Coal Company under the Coal Mines (Nationalization) Act, 1973. After nationalization of the mining areas, mechanical open cast mining operation was started in 1979 but the mining activities of the Coal Company led to degradation through pollution of surrounding lands of the local villagers. In the early days, the environment protective measures were inadequate and accordingly downstream degradation was noticed in the vicinity.

3.2. Affected by the open cast mining, the claimant Society approached this Court through the PIL No. 25/2001 and in that proceeding the Division Bench sought the report of the Pollution Control Board. When the report of the Pollution Control Board was found to be positive, the closure of the PIL was ordered on 14.12.2001 (Annexure-3).

3.3. When the PIL didn't yield the desired result, the Secretary of the claimant Society filed the Case No. 3065/2001 before the Assam Human Rights Commission, where the petitioner alleged damage to their paddy fields and fisheries. In that proceeding, the Commission noted that the Coal Company had taken preventive measures to minimize pollution and there is marked improvement in crop production in the area due to steps taken by the Coal Company. The Commission also noted that compensation was paid to the villagers, who suffered damage to their agricultural land due to mining activities. Acknowledging this positive trends, the Commission through its order dated 13.11.2002 (Annexure-4) closed the proceeding initiated by the Secretary of the claimant Society.

3.4. However a 3rd litigation was then started by the claimant Society in the shape of WP(C) No. 4056/2003 and at the motion stage without notice to the Coal Company, this case was disposed of on 16.11.2006 (Annexure-5) with direction to the Dy. Commissioner, Tinsukia to verify the claim and determine the compensation payable to the members of the claimant Society. This ex-parte decision was challenged by the Coal Company in W.A. No. 58/2008, which was disposed of on 9.5.2008 (Annexure-10). In their final order, the Division Bench observed that although compensation was earlier paid for the land degradation, the pollution from open cast mining can lead to continuous damage and therefore the Dy. Commissioner was allowed to finalise the assessment of compensation after considering the objection of the Coal Company.

3.5. In pursuant to the order passed by this Court on 9.5.2008 (Annexure-10) in the W.A. No. 58/2008, the matter was considered by the Addl. Dy. Commissioner, Tinsukia, where the parties were heard. The officer identified two issues to be decided: (i) Whether payment of double compensation to those who already received compensation is justified; and (ii) Whether compensation at higher rate

as per the revised jirat list notified by the Government on 17.8.1998 is required to be taken into account for assessing the payable compensation.

3.6. Taking the two issues into account, the Addl. Dy. Commissioner held that double payment should not be made. But crop damage compensation to the tune of Rs. 2,98,31,308/- was assessed to be paid by referring to the Government notification dated 17.8.1998.

SUBMISSIONS OF THE COAL COMPANY

4.1 According to the Coal Company, due compensation was already paid in 1995 to the affected land owners on the basis of degradation assessed through joint verification and money was received without objection by most claimants, through their written agreements, witnessed by the Lat Mandals of the area.

4.2. Referring to the observation made by the Division Bench, when it closed the PIL No. 25/2001 and also the observation of the Human Rights Commission, when it passed the order on 13.11.2002 (Annexure-4), the learned senior counsel submits that the preventive measures to arrest pollution damage was effective and it resulted in improvement of crop production in the area and therefore the Coal Company contends that arbitrary fixation of compensation without proper evaluation of the actual damage through joint verification could not have been ordered by the Addl. District Magistrate.

4.3. Referring to enhancement of the jirat rate notified by the Government on 17.8.1998, Mr. MZ Ahmed, learned senior counsel submits that without specific assessment on the actual extent of damage, compensation can't be ordered merely because, the jirat rate was revised through the Govt. Notification dated 17.8.1998.

4.4. The Coal Company argues that when the preventive pollution control measures arrested degradation as was observed by the Human Rights Commission, the assessment of further damages (if any), has to be made through a joint verification exercise at the site of the damage and additional compensation could not have been ordered merely because the jirat rate was revised by the Government, through their notification dated 17.8.1998.

4.5. The learned senior counsel projects that the authority should have considered the pollution control measures installed by the Coal Company, which considerably arrested degradation and without verifying whether degradation did actually continue despite the pollution control measures, the Coal Company could not have been burdened with claim for further damage by the Officer.

SUBMISSION FROM THE CLAIMANTS SOCIETY

5.1. Mr. AB Choudhury, learned senior counsel refers to the report furnished on 14.2.2007 by the Circle Officer, Margherita which indicates that the damage was assessed by the concerned Lat Mandals which revealed that 108 families in their 732 Bigha 3 Katha 8 Lecha lands were affected due to open cast mining activity

since 1989--2006. Accordingly the senior counsel argues that verification was made by the Lat Mandals and since that was made the basis for assessment of damage by the Addl. District Magistrate, the same should not be disturbed by the Writ Court.

5.2. Referring to the Addl. District Magistrate's impugned order dated 7.8.2008, the senior counsel submits that those 28 members, who earlier received compensation were kept out of the purview of the payable compensation assessed by the Addl. District Magistrate and accordingly the claimants contend that the finally assessed compensation (which was reduced from Rs. 4,61,48,840/- to Rs. 2,98,31,308/-), was in order. 5.3. Projecting that the claimants are poor farmers, the senior counsel argues that when compensation was determined by the competent Authorities in pursuant to the direction given by the Division Bench in the W.A. No. 58/2008, the same should be directed to be disbursed to the claimants who didn't receive any money because of the interim order passed by this Court on 19.11.2008 in WP(C) No. 4807/2008.

SUBMISSION OF THE STATE

6. The State authorities are represented by the Govt. Advocate Ms. HM Phukan and she refers to the counter affidavit filed by the Project Director, ITDP, Tinsukia to submit that the pollution control measures installed by the Coal Company were inadequate and failed to prevent downstream degradation during heavy rainfall and accordingly she supports the assessment of damage made by the Addl. District Magistrate, which was based on the verification made by the Lat Mandals and the Circle Officer of the concerned area.

DISCUSSION AND DECISION

7. From the materials available in the case record, it can be gathered that open cast mining activities of the Coal Company led to land degradation and many affected land owners were paid compensation in 1995 as per the assessment made through joint verification of the Revenue Officials and the representatives of the Coal Company. When the compensation amount was received by those land owners, they gave written undertaking(s) on 29.3.1995 (Annexure-1 series) to not to claim further damages in future.

8. During open cast mining, whenever the available coal is extracted, the mining operation stops in that area and the Coal Company restores the mined land through earth filling and plantation. Then the mining activities are shifted to another coal rich area. Therefore in the process under consideration, because of shifting of the mining areas, it is possible that degradation is not suffered by the same group, when the mining activity is not constant over a fixed area. Therefore one can reasonably expect that degradation will stop at some point or the affected group will be from another area. But the possibility of continued damage to the same group can't entirely be ruled out even in this process, as was observed by the Division Bench on 9.5.2008 (Annexure-10), when it disposed of the W.A. No. 58/2008.

9. Therefore the issue that was required to be decided by the District Magistrate is whether the members of the claimant Society suffered continued damage through pollution emanating from the mining activities of the Coal Company. But unfortunately the damage wasn't assessed from this perspective and instead a rough and ready assessment was made on the basis of the revised jirat rate notified by the Government on 17.8.1998.

10. When the jirat rate is modified by the Government, the rate at which damage is payable will naturally have a cut off date and those who suffered damage prior to the cut off date will receive lesser compensation and those after the cut off date, will receive higher compensation for equivalent loss. But in either case, the determination of damage is to be made through acceptable verification exercise or in this case, it was to be decided whether continued damage was suffered. But the Addl. District Magistrate without any independent exercise, chose to rely on the report furnished by the Lat Mandal but in that exercise there was no participation by anyone from the Coal Company. Thus unilateral assessment was made without involving the Coal India by whom the damages were payable.

11. But merely because the Coal Company was not allowed to participate in the verification exercise, suffering of continued damage can't be ruled out altogether. If that be a possibility and having regard to the orders passed by this Court on 16.11.2006 in the WP(C) No. 4056/2003, which was left undisturbed by the Division Bench in the W.A. No. 58/2008, I am of the view that the District Magistrate, Tinsukia should be directed to decide whether any continuous damage was suffered in this case. But verification must be made through a participatory exercise, where the Coal Company and the claimant Society should be allowed to make their projections. When the extent of damage (if any) is finalized, the applicable rate of compensation must also be decided by taking into account the cut off date, as per the revised jirat list notified on 17.8.1998. Or in other words, for the damage suffered prior to 17.8.1998, the compensation should be made payable at the old rate and for the post 17.8.1998 damage, payment should be at the revised rate.

12. The matters are accordingly remitted back to the District Magistrate, Tinsukia to carry out a fresh exercise with participation of both contesting groups. This should be completed expeditiously and preferably within 3 months from the date of receipt of this order. During the process, the parties should be permitted to adduce evidence in support of their respective contention(s). It is ordered accordingly. With this direction, the cases are disposed of without any order on cost.

13. A copy of this order be furnished to the Govt. Advocate Ms. HM Phukan to enable her to inform the authorities.