(1991) 10 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14 of 1987 (R)

National Coal Development Corporation — APPELLANT

Vs

Commissioner of Payments and others — RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:
Coking Coal Mines (Nationalisation) Act, 1972 — Section 10, 11, 19, 2, 22

Citation : (1993) 1 PLJR 482

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Debi Prasad and Suresh Prasad, for the Appellant; N. Roy and I.D. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 19.12.85 passed by the respondent No. 2 and as contained in Annexure-2 to the writ application in Misc. Appeal No. 22 of 1982 whereby and wherunder the said learned court set aside the order passed by the respondent No. 1 dated 13.5.1982 in Claim case No. 6260 of 1973. The fact of the matter lies in a very narrow compass.

2. A Colliery known as Turiyo Colliery belonged to the respondents No. 3 and 4. The said colliery vested in the Central Government under the provisions of Coking Coal Mines (Nationalisation) Act, 1972 with effect from 1.5.1972. Prior thereto the management of the colliery in question vested in the Central Government in terms of the provisions of Coking Coal Mines (Emergency Provisions) Act, 1971.

3. The Central Government in exercise of its power conferred upon it under the said Act of 1971, directed the petitioner (Previously known as National Coal Development Corporation Limited) to take over the said management.

4. The management of the aforementioned colliery was thus in the hands of the

petitioner up to 30th April, 1972.

5. In terms of Section 25 of the aforementioned Act, the petitioner filed a claim case as against the respondent No. 4 claiming a sum of Rs. 6,03600/-.

6. The respondent No. 1, by reason of his order as contained in Annexure-1 to the writ application determined the liability of the respondent Nos. 3 and 4 to the extent of Rs. 63,000/-.

7. The respondent Nos. 3 and 4 being aggrieved by the said order dated 13.5.1982 preferred an appeal in the court of District Judge, Giridih which was registered as Misc. Appeal No. 22 of 1982.

8. By reason of the impugned order dated 19.12.1985 as contained in Annexure-2 to the writ application, the respondent No. 2 allowed the appeal preferred by the respondents no. 3 and 4.

9. In the impugned order, the respondent no. 2, inter alia, held that the petitioner cannot be said to have substantiated its claim u/s 25 of the said Act. It is further held that the respondent no. 4 was entitled to the value of the stock of coal lying at the pit head as on 30th April, 1972, in view of the decision of the Supreme Court in Central Coal Fields Ltd. Vs. Bhubaneswar Singh and Others, .

10. The respondent nos. 3 and 4 have not appeared in this case.

11. After the decision of the Supreme Court in Central Coalfield Limited''s case (supra), the provisions of Coking Coal Mines (Nationalisation) Act, 1972 has been amended with retrospective effect.

12. Section 25 of the said Act was amended by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 with retrospective effect.

13. Section 22 of the Coking Coal Mines (Nationalisation) Act was also amended by inserting sub-section 4 and sub-section 8 which reads as follows :--

(4). The liabilities of the coking coal mine or the coke oven plant (not being liabilities arising out of advances made by the Central Government or the Government company), which could not be discharged by the appointed day, may be discharged by the Central Government or the Government company up to the specified date out of the realisations effected before or after the appointed day or out of advances or borrowings made up to the specified date and every payment so made shall be included in the statement of accounts as on the date immediately before the appointed day indicating therein the period in relation to which the payments were made and the payments so made shall not be called in question in any court:

Provided that the liabilities in relation to the period prior to the appointed day which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coking coal mine or this coke oven plant, as the case may be.

(8) the statement of accounts audited under sub-section (6) shall, unless the contrary is proved, be conclusive proof in respect of every matter entered therein.

Explanation.--For the purposes of this section, "Statement of accounts" means a statement in the form of receipts and payments, and does not include any statement that may be prepared as a result of the closing and balancing of the book for the preparation of the profit and loss account and balance sheet or any statement prepared in accordance with the normal commercial practice.

14. Section 25 of the said act now reads as follows :--

25. Recovery of excess payments made by Central Government or Custodian.--Any amount in excess of payments over receipts in the statement of accounts prepared u/s 22 shall be deemed to be an amount advanced by the Central Government or the Custodian, as the case may be, for the management of a coking coal mine or a coke oven plant during the period in which the management of such mine or plant remained vested in the Central Govt. and the Central Government may make a claim to the Commissioner for such excess payment and such claim shall have priority over the claims of all other unsecured creditors of the coking coal mine or coke oven plant.

Explanation.--In this section, "Custodian" means the Custodian, appointed under the Coking Coal Mines (Emergency Provisions) Act, 1971.

In view of the aforementioned provisions as contained in sub-section 8 of section 22 of the Coking Coal Mines (Nationalisation Act, 1972, as amended by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 which as stated hereinbefore, was given retrospective effect and retrospective operation with effect from 1.5.1972, the situation has changed.

15. Section 19 of the aforementioned Coal Mines Nationalisation Laws (Amendment) Act, 1986 provides for a validation clause, which reads as follows :--

19. Validation,--Notwithstanding any judgment, decree, order or direction of any court to the contrary--

(a) Every amount paid to the owner of every coking coal mine or group of coking coal mines u/s 10, or of every coke oven plant u/s 11, of the Coking Coal Act, or to the owner of every coal mine or group of coal mines u/s 8 of the Coal Mines Act (hereafter in either case referred to as the owner), shall be deemed to include and be deemed always to have included, the amounts required to be paid to the owner in respect of the coal in stock or other assets, coke in stock or other assets, referred to in clause or clause (b) of section 3 of the Coking Coal Act or as the case may be, coal in stock or other assets referred to in Clause (h) of section 2 of the Coal Mines Act, on the date immediately before the appointed day as if the provisions of section 10 or section 11 of the Coking Coal Act, or as the case may be, section 8 of the Coal Mines Act, as amended by this Act had been in force at all material times, and no such payment shall be called in question in any court on the ground that it had not included the value of such coat or coke or other assets ;

(b) Every statement of accounts or supplementary statement of accounts prepared by the Central Government or the Government company u/s 22 of the Coking Coal Act or u/s 19 of the Coal Mines Act, shall be deemed to have been validly prepared as if the provisions of section 22 of the Coking Coal Act, or as the case may be, Section 19 of the Coal Mines Act, as amended by this Act, had been in force at all material times, and no such statement of accounts or supplementary statement of Accounts shall be called in question in any court on the ground that it had not been prepared in accordance with the normal commercial practice or that any item has or has not been included in such statement;

and accordingly no suit or other legal proceeding shall be maintained or continued in any court--

(i) for the recovery of any sum on the ground that the amount paid to the owner u/s 10 or section 11 of the Coking Coal Act or u/s 8 of the Coal Mines Act, does not include the amounts required to be paid in respect of all coal or coke in stock or other assets referred to in Clause (a); or

(ii) for the recovery of any sum as being the excess of receipts over payments on the ground that the statement of accounts or supplementary statement of accounts required to be prepared u/s 22 of the Coking Coal Act, or as the case may be, section 19 of the Coal Mines Act, had not been prepared in accordance with the normal commercial practice or that any item has or has not been included in such statement.

Explanation.-In this section.--

(a) "appointed day" means.--

(i) in relation to the Coking Coal Act, the 1st day of May, 1972; and

(ii) in relation to the Coal Mines Act, the 1st day of May, 1973;

(b) "receipts" and "Payments" mean receipts and payments in the statement of accounts prepared u/s 22 of the Coking Coal Act or, as the case may be, Section 19 of the Coal Mines Act.

The aforementioned validation provision coupled with the amendment of the Coal Mines Nationalisation Laws with retrospective effect, the statement of accounts shall be a conclusive proof in respect of every matter entered therein.

16. In such a situation, the claim of the petitioner has now to be considered in the light of the amending Act, of 1986 as quoted hereinbefore upon taking into consideration the judgment of the Supreme Court in Central Coalfield Limited''s case (supra).

17. In this view of the matter, this application is allowed, the judgment passed

by the respondent No. 2 as contained in Annexure 2 to the writ application is set aside and the respondent No. 2 is hereby directed to re consider the aforementioned Misc. Appeal No. 22 of 1982 afresh in accordance with law.

18. As the respondents No. 3 and 4 have not appeared in this application, the respondent No. 2 shall hear the matter after issuing notices to the petitioner as also the respondent No. 4. This application is allowed to the extent mentioned hereinbefore. However, in the facts and circumstances of this case, there will be no order as to costs.