

(1976) 01 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 909 of 1974

National Coal Development Corporation Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-01-1976

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9

Citation : AIR 1976 Ori 159 : (1976) 42 CLT 580

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The National Coal Development Corporation Limited, incorporated under the Companies Act, 1 of 1956, is wholly owned by the Government of India and carries on extensive mining operation in coal throughout the country. It has five collieries within the Talcher Sub-division of the district of Dhenkanal of this State, namely--

(i) Talcher Colliery,

(ii) Deulbera Colliery,

(iii) South Balanda Colliery,

(iv) Jagannath Colliery,

(v) Nandira Colliery.

Petitioner alleges that for the carrying out of mining operations a Large number of workmen have been engaged and it is customary in the mining industry that such workers within the mining area draw coal for their own domestic consumption. This traditional advantage has been recognised in several industrial

adjudications and settlements between mine owners and their workmen. Coal mines are located in various States of the country and though they are properties of the various States where located, their regulation and development is controlled by a Central Act entitled the Mines and Minerals (Regulation & Development) Act (Central Act 67 of 1957) (hereinafter referred to as the "Act"). Under its provisions, royalty has always been demanded, paid and accepted by all the States on the basis of the quantity of coal produced and despatched from the Collieries and coal consumed by the workmen for their domestic purposes had never been taken into account for the purpose of raising the demand of royalty, until sometime around 1970, when the Mining Officer of Talcher Circle started initiating proceedings under the Orissa Public Demands Recovery Act for realisation of arrears of royalty on coal consumed by the workmen in the Talcher and Deulbera Collieries of the petitioner company. Petitioner disputed the maintainability of the certificate proceeding on the footing that the alleged demand was not due under the statute and that contention, having been negatived both by the Certificate Officer as also the appellate authority, petitioner carried a revision to the Revenue Divisional Commissioner and during the pendency of the revision approached this Court and later withdrew the revision application.

2. A counter-affidavit has been filed on behalf of opposite parties 1 to 3 to justify the demand.

3. On behalf of the petitioner, it is contended that the liability of paying royalty arises in view of the provision in Section 9 of the Act, which runs thus :--

"(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in_ respect of any mineral removed by him from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(3) The Central Government may, by notification in the official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not--

(a) fix the rate of royalty in respect of any mineral so as to exceed twenty per cent of the sale price of the mineral at the pit's head, or

(b) enhance the rate of royalty in respect of any mineral more than once during any period of four years."

The procedure for recovery of royalty has been provided under the Mineral Concession Rules and the lease agreement. On the basis of these provisions, it is stated that unless coal is removed from the leased area, i.e. extracted from the colliery and despatched outside, liability for payment of royalty does not accrue. Reliance is placed on a decision of the Calcutta High Court in the case of Aluminium Corporation of India Ltd. Vs. Coal Board, . Petitioner's further contention is that when within the State of Orissa such unauthorised demands were made, the Government of India examined the correctness of the liability and advised the State Government not to raise the demand. Ultimately by Section 4 of Central Act 56 of 1972, Section 9 of the parent Act was amended to give the true interpretation of the statutory provision in the parent Act. Section 4 of the Amending Act runs thus:--

"4. In Section 9 of the principal Act,--

(i) in Sub-sections (1) and (2), for the words "mineral removed by him", wherever they occur, the words "mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee" shall be substituted;

(ii) after Sub-section (2), the following sub-section shall be inserted, namely:--

"(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month."

(iii)"

Section 9 of the parent Act created liability for royalty in respect of mineral removed by the holder of a mining lease from the leased area. In Part V of the "Model Form of Mining Lease" prescribed under the Mineral Concession Rules, the following provision has been made relating to royalties :--

"(3) Rate and mode of payment of royalty.-- Subject to the provision of Clause (1) of this Part, the lessee/lessees shall during the subsistence of this lease pay to the State Government at such times and in such manner as the State Government may prescribe royalty in respect of any mineral/minerals removed by him/them from the leased area at the rate for the time being specified in the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957."

Under Clauses (1) and (2) of Part VI of the said Form, it has been further provided thus:--

"(1) Rent and royalties to be free from deduction, etc.-- The rent, water rate and royalties mentioned in Part V of this Schedule shall be paid free from any deductions to the State Government at...and in such manner as the State Government may prescribe: Provided always and it is hereby agreed that

Rs.....the balance standing to the credit of the lesseeAessees on account of the deposit made by him/them as a licensee/licensees over an area which included the said land shall be retained and accepted by the State Government in satisfaction of the rents and royalties mentioned in Part V until they reach that amount.

(2) Mode of computation of royalty.--For the purposes of computing the said royalties the lessee/lessees shall keep a correct account of the mineral/minerals produced and despatched. The accounts as well as the weight of the mineral/minerals in stock or in the process of export may be checked by an officer authorised by the Central or State Government.

(Here specify the mode of arriving at sale price/prices at pit"s mouth of mineral/minerals)."

Under Clause 3 of Part VI, upon failure to pay royalties, the arrear royalty is recoverable in the same manner as an arrear of land revenue.

4. Mr. Mohanty for the petitioner claims that liability for royalty accrues only when coal is raised and despatched from the mining area. In other words, unless the extracted coal is sent outside the mining area, liability for royalty does not arise at all. Learned Additional Government Advocate, on the other hand, contends that liability for royalty under the statute and the scheme contained in the Mineral Concession Rules arises when coal is extracted and reaches the pit"s mouth. Emphasis is laid by him on the provisions of Clause 2 of Part VI of the Model Form referred to above. It is claimed that the basis of computing royalty is the sale price at pit"s mouth of the mineral.

5. The Calcutta High Court decision relied upon by Mr. Mohanty for the petitioner was dealing with provisions of Coal Mines (Conservation and Safety) Act, Section 8 of that Act makes provision for imposition of excise duty and liability for excise duty arises when coal is raised and despatched. Interpreting this provision of the statute, Chakravartti, C. J. spoke for the Court thus:--

"..... But the section does not impose the duty on "coal raised" but imposes it on coal raised and despatched. The added requirement of despatch is not, on the one hand, an essential pre-requisite for the imposition of an excise duty, nor does it, on the other hand, make the duty any the less a duty of excise. It only marks the point of time to which the legislature has chosen to defer the collection of the duty, though the effect is that on coal raised from the collieries in India but not despatched therefrom, the duty imposed by the section is not to be levied. As to the constitutional validity of duty, its nature being that it is a levy imposed as a contribution to the revenues of the country and not a licence or other fee intended to regulate coal-mining, the law imposing it cannot be said to be legislation under Item 54 of the Union list, but it is good legislation under Item 84 of the same list, since coal raised from mines can well be said to be goods produced. But the scope of the law is a further ques-ti:on. Under it even in the case of coal moved from the collieries, it must be despatched in order that

the duty may be attracted. Assuming, one can despatch goods to oneself and even assuming that, in theory, goods sent by a producer to himself can be the subject of a duty of excise, it is clear from the common language of Sections 8 (1) (a) and 8 (1) (b), as elucidated by Section 8 (2) of the present Act, that Section 8 (1) (a) only contemplates coal despatched from a colliery to a person other than the owner. In any event, goods merely moved from one part of an establishment to another by way of domestic appropriation cannot be said to be despatched and, therefore, in the present case, where the colliery, the powerhouse and the factory- are all situated within the same compound and constitute together a single industrial unit belonging to the appellant, coal taken from the colliery to the appellant, coal taken from the colliery to the power house about a furlong away for use there, in the generation of electricity for the manufacture of aluminum by the factory cannot be said to be despatched within the meaning of Section 8 (1) (a) and cannot be charged to the duty prescribed thereby."

Though Mr. Mohanty relied upon this decision to support his proposition, when learned Additional Government Advocate claimed that the decision should not be followed and gave the illustration that where within the mining area, the lessee would put up a factory which would consume the entire coal extracted by him, on the ratio of the Calcutta decision, no royalty would at all be payable, Mr. Mohanty conceded that the ratio indicated by the decision may not at all be applicable in case of royalty, The State Government is the owner of the mine and royalty is an incidence payable on the basis of extraction and appropriation. The incidence of royalty under the general tenor of the scheme arises when coal is severed from the seam in its natural state within the mine and removed outside. Up to this extent, there does not seem to be much of dispute between the parties, but according to Mr. Mohanty, the liability arises when there is "despatch" while according to counsel for the State, the word "despatch" in the Model Form may not be given un-due importance, because u/s 9 of the Act liability is intended to accrue when coal is removed from the leased area. Mr. Mohanty contends that the word "despatch" in the Model Form is on the footing of the concept of removal! from the leased area. We are not impres-sed with this contention. Removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty. When royalty is more akin to rent or compensation payable to an owner by the lessee for exploitation of the mineral wealth, we do not think Section 9 would admit of an interpretation as canvassed by Mr. Mohanty. The requirement in Clause 2 of Part VI of the Model form of mining lease that the mineral in stock is to be taken note of for the mode of computation of royalty is a feature against. Mr. Mohanty's contention. In Section 9, no provision for despatch having been made we are not inclined to attach importance to the use of the word in Clause 2 of Part VI of the Model Form of Mining Lease nor do we think the decision of the Calcutta High Court is of any assistance to Mr. Mohanty's contention.

6. Mr. Mohanty next relies upon the provisions of the Amending Act in support of his contention. He claims that as from the working of the statutory provision, it transpired that the true intention of the statute as contained in Section 9 of the parent Act was not being followed. Parliament stepped in to bring in the amendment for giving effect to its true intention in Section 9 of the parent Act. On the other hand, learned Additional Government Advocate contends that when a deficiency in the statute was experienced, Parliament thought it appropriate to make legislative provision for the first time allowing an exemption. Undoubtedly, an amendment of statute becomes necessary in either contingency. As we find, in the facts of the case, the contention of learned Additional Government Advocate is appropriate. A declaratory provision was not made to pronounce the intention of the legislation in the parent Act. On the other hand, a new sub-section was added to confer for the first time a benefit. The manner in which Sub-section (2-A) of the Amending Act has been couched comes to support the contention advanced on behalf of the State that the benefit was intended to be conferred for the first time. A limit of one-third of a tonne per month per workman has been fixed. Prior to the amendment, according to Mr. Mohanty, there was no such restriction. That would mean that Parliament wanted to reduce the benefit conferred and enjoyed until the Amending Act. There does not seem to be any rationale for taking such a view. We are inclined to agree with learned Additional Government Advocate that for the first time, a statutory benefit has been conferred and the parent provision did not admit of the interpretation advanced by Mr. Mohanty. The lacuna having been realised, the Legislature has stepped in to improve upon the law.

7. No material has been placed before us to hold that the practice claimed by the petitioner was traditional, conventional or customary and it had come to be recognised in industrial disputes. It is true that some legal opinion obtained by the Government of India supported petitioner's contention, but such opinion cannot stand against an appropriate interpretation of the statute.

8. We would accordingly negative the contention raised by Mr. Mohanty for the petitioner and dismiss this application. In the facts of this case, it is appropriate that parties are directed to bear their own costs.

Das, J.

I agree.