

(1970) 02 CAL CK 0029

In the Calcutta High Court

Case No : A.F.O.O. No. 254 of 1966 and Matter No. 198 of 1963

Ondal Coal Co.

APPELLANT

Vs

Sonepur Coal Fields Ltd. and Others

RESPONDENT

Date of Decision : 18-02-1970

Acts Referred:

Coal Mines (Conservation and Safety) Rules, 1954 — Rule 39, 39(3)
Coal Mines (Conservation, Safety and Development) Act, 1952 — Section 3(1)
Constitution of India, 1950 — Article 14
Mines Act, 1923 — Section 3

Citation : AIR 1970 Cal 391

Hon'ble Judges : D. Basu, J;A.K. Basu, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. This is an appeal against the judgment of A. N. Roy, J., (as he then was), dated January 20, 1966, by which the Rule obtained by the Respondents, Sonepur Coal Fields, was made, absolute, and the order of the Coal Board of May 17, 1963, which is at p. 31 of the Paper Book, was quashed. The present appeal is by the Ondal Coal Co., which was Respondent No. 4 in the Petition under Article 226 of the Constitution brought by the Sonepur Coal Co., (hereinafter referred to as the Petitioner Co.).

2. The Petitioner Co.'s case was that the Ondal Coal Co., a lessee of the disputed coal mines, granted a sub-lease in favour of the Petitioner Co., and delivered possession on June 1, 1946, since when the Petitioner Co. has been in possession and has also fulfilled the other terms of the agreement of sub-lease, so that, the only interest now left with the Ondal Co., in the said Mines is the right to receive royalty from the Petitioner Co. The Petitioner's case, in the aforesaid circumstances, is that the Petitioner Co. has become the "owner" of the disputed Mines within the meaning of that term in the Coal Mines (Conservation and Safety) Act, 1952 (hereinafter referred to as "the Act"), and as such is entitled to obtain permission under the Act, from the Coal Board (Respondent

No. 1 in the Petition), for opening and reopening the Mines.

3. The Petitioner, in fact, did obtain such permission in 1947 under the Coal Control Order of 1945 (p. 23) but the Mines could not then be worked by the Petitioner Co. The Company subsequently made an application to the Coal Board under the Rules made under the Act for reopening the Mines in July 1957 and the Coal Board advised the Petitioner Co. to obtain a licence from the Central Government under the Industries (Development & Regulation) Act, 1951 to establish an industrial undertaking for production of Coal. Before the application of the Petitioner to the Board could be disposed of in March 1961, the Board informed the Petitioner that a similar application had been received from the Ondal Coal Co. The Petitioner Co., protested against the granting of any permission in favour of the Ondal Coal Co. but the Board did not pay any heed to that. Coming to know that the Board was going to hold a meeting for disposing of the application of the Ondal Co., without issuing any notice to the Petitioner Co., the Petitioner sent a formal letter to the Board through its Solicitors, on February 4, 1963, raising objections (p. 23). The Board asked for certain information from the Petitioner Co. (p. 28) and eventually, by its impugned letter at p. 31, informed the Petitioner Co., that since the latter had not produced the documents called for by the Board, the Board had taken final decision "granting" reopening permission to the Ondal Coal Co."

4. In the Petition, the petitioner prayed for quashing the impugned order of the Board in favour of the Ondal Co, and for directing the Board to grant the permission to the Petitioner. The learned Trial Court came to the following conclusions:

(a) That the Petitioner was an "owner" within the meaning of the Act and was entitled to apply for the permission;

(b) That the duty to be performed by the Board in the matter was quasi-judicial and that the impugned order made, without hearing the Petitioner, was violative of the requirements of natural justice.

(c) As to whether the Petitioner Co., had obtained possession, the Court did not come to a finding, presumably because it was considered unnecessary.

5. The Appellant Co., has challenged the findings of the Court below and has also contended that the Board has, in fact, offered to the Petitioner sufficient opportunity to represent its case.

6. The first question for determination is whether the Petitioner is an "owner" within the meaning of Rule 39 (2) of the Rules made under the Act. Sub-rule (1) of this Rule says that no mine can be opened or reopened without the prior permission in writing of the Board, for which an application has to be made by the "owner", under Sub-rule (2). The term "owner" is not defined in the Rules. The definition clause in Section 3(1) says that for the definition of this term we are to refer to Section 3 of the Indian Mines Act, 1923. The material portion of

that definition is:

" "Owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine but does not include a person who merely receives a royalty, rent or fine from the mine"

The petitioner Co., is therefore, entitled to claim to be the owner", if it can establish the case made in the Petition, namely, that it is a sub-lessee or that it was the occupier of the disputed mines.

7. In the counter-affidavit of the Ondal Coal Co., it is admitted that by a written agreement executed by the Co. in December, 1947, the Company assigned its leasehold interest in the Petitioner Co. and also delivered possession of the surface, in terms of such assignment (para. 3 (m)). The agreement, however, was not completed owing to the default of the Petitioner, according to the Ondal Coal Co., -- so that the latter has recovered possession of the mines from the Petitioner in January, 1960. That the latter threatened to re-enter would appear from the correspondence at page 217 of the Paper Book, but the Petitioner Co., denied the allegation of actual recovery of such possession and at the hearing before the learned trial judge it was contended on behalf of the Petitioner Co., that no particulars as to how such possession had been recovered had been given in the counter-affidavit (p. 235 of the Judgment). There was thus an admission by the Ondal Co. that the Petitioner had entered into possession of the mines under the agreement of sub-lease. This much was prima facie sufficient to make the Petitioner an "occupier" within the meaning of the definition of owner". It was for the Ondal Coal Co. to establish how that possession had been recovered back. The trial Court, apparently, was not satisfied as to the affidavit of the Ondal Coal Co., on this point but did not enter into an investigation of this disputed fact. It is not possible for this Court to come to a finding on this question of fact, which it was for the Board to decide.

8. It cannot be held that it was not necessary for the Board to decide the aforesaid question inasmuch as since no lease-deed had yet been executed in favour of the Petitioner Co., it cannot be held to be a lessee". Nevertheless, it could claim the locus standi to make an application if it established that it was an occupier". To do that, it was necessary for the Petitioner to show that it was in possession at the date of the application before the Board.

9. Since the Petitioner had made such averment in its application before the Board, and had, in fact, reiterated it in its letter to the Board as late as February 4, 1963. The question of "possession" was not thus irrelevant for the disposal of the application before the Board before coming to a finding whether or not the Petitioner Co., was an "occupier" within the definition of "owner" in the relevant statutory provisions. And the Board did the right thing in calling upon the Petitioner to produce his title deed and/or disclose the material facts as to its possession as alleged (p, 28). But the Board did not give the Petitioner an opportunity of showing cause why, in the absence of the Petitioner's evidence

forthcoming, the Board should not reject the Petitioners application and make order in favour of the Ondal Coal Co.

10. No such thing has been done and there has in fact been no order by the Board rejecting the Petitioner's application. When the learned Judge was directing the Board to come to a fresh decision, it should have also directed the Board to determine the question whether the Petitioner was an "owner", after giving it a fresh opportunity of adducing evidence of its possession.

11. The real question for determination, therefore, is whether the Coal Board was entitled to decide the application filed by the Petitioner or by the Ondal Co., without hearing the Petitioner as held by the learned Judge (p. 235 of the Paper Book).

12. The manner in which the Board is to dispose of an application for such permission is laid down in Sub-rule (3C) of Rule 39 of the Rules made under the Act, It says-

"No order under Sub-rule (3A) or (3B) shall be passed unless the owner concerned has been given an opportunity of making representation against the order proposed."

13. Now, Sub-rule (2) requires that the person seeking such permission must make an application in writing. In disposing of such application, the Board has to give the applicant "an opportunity of making a representation against the order proposed." It is, therefore, clear that some other step has to be taken by the Board than merely going through, the application, before disposing of it. The learned trial Judge has held that this required that the Board must give a personal hearing to the applicant before coming to its decision. It is not possible for us to go so far since it is now established both in England and in India that the requirements of natural justice which a quasi-judicial tribunal has to comply with do not conform to any rigid formula which is universally applicable out they vary with the varying constitution of the tribunals and the statutory provisions which govern them (General Medical Council v. Spademan 1943 AC 627 ; Local Govt, Board v. Arlidge 1915 AC 120 (HL); Russel v. Duke of Norfolk (1949) 1 All ER 109 ; New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., and also that a personal, hearing is not an essential ingredient of natural justice in every case (A.K. Gopalan Vs. The State of Madras, ; F.N. Roy Vs. Collector of Customs, Calcutta,).

14. In the instant case, the statutory rule merely requires that the Board must give the applicant an "opportunity of making representation against the order proposed." It must therefore be held that the Board had no obligation to give the applicant an opportunity of appearing before the Board and to make oral arguments. But the applicant was entitled to a notice to show cause why the order to give the permission to the Ondal Co., should not be made, before making the impugned order. That is the meaning that Courts have given to the expression "opportunity of making representation", in various statutes e. g.,

(A.K. Gopalan Vs. The State of Madras,); Union of India (UOI) and Another Vs. P.K. Roy and Others, ; Kanda v. Govt. of Malaya (1962) 2 WLR 1153 (PC); Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI),). In the last mentioned case, it was clearly laid down that the statutory expression "opportunity to make representation per se did not imply anything more than the opportunity to make a written representation.

15. It remains therefore to see whether the Board, in the instant case, gave the Petitioner Co., the opportunity to make a written representation before making the impugned order. It is true that the Board by its letter of April 6, 1963 (p. 28 of the Paper Book) asked the Petitioner Co., to produce copies of its sub-lease and also furnish information as to its possession, for the purpose of making "inquiry". In its reply, the Petitioner Co., promised to produce its evidence but before doing that it demanded information from the Board whether the Ondal Co., had made a similar application to the Board. This letter was dated May 7, 1963 (p. 30). The Board gave no reply to this letter but by the impugned letter of May 17, 1963 (p. 31), it was merely stated that "although more than a month has elapsed your clients have not produced any document in support of the case made out by them," accordingly, the Board was taking the final decision "granting permission to the Ondal Coal Co." It is evident that no real opportunity to produce the evidence called for was afforded to the Petitioner, in the circumstances of the case.

16. It is to be noted that the Board did not supply the information, asked for by the Petitioner Co., in its letter of May 7, 1963 which was a material information required if it had to make a representation why an order in favour of the Ondal Co., (the Petitioner's alleged lessor), in place of the Petitioner should not be made. At any rate, they could not, in the face of the statutory obligation, make the impugned order without issuing a notice to the Petitioner to show cause why an order in favour of the Ondal Co., should not be made. This obligation not having been complied with, the impugned order is ultra vires and without jurisdiction. We should also observe that if the Board really used the evidence adduced by the Ondal Co., against the Petitioner, they could do so only after supplying to the Petitioner the materials relied upon by the Ondal Co., so that the Petitioner might be in a position to meet them.

17. We, therefore, agree with the trial Court that the Rule should be made absolute, but on different grounds.

18. But before making our order, we must notice the fact, brought to our notice on behalf of the appellant, that in the order which was drawn up by the office in pursuance of the judgment of the Trial Court, the office went beyond the judgment and directed the Board "to issue an order according to permission to the said Petitioner Company in terms of its application mentioned in the said petition." No such order can be made by any Court in a proceeding for certiorari. In view of this blunder in the operative order, we have to allow the appeal in part, in the following terms-

19. The appeal is allowed in part and the judgment and order of the Court below be modified as follows:

The Rule be made absolute, the impugned order of the Coal Board be quashed and the Coal Board (Respondent No. 1) be directed to decide the application in accordance with the law, in the light of the observations made herein.

We make no order as to costs.

A.K. Basu, J.

20. I agree.