

(1985) 07 CAL CK 0007
In the Calcutta High Court
Case No : F. M. A. No. 505 of 1984

S. K. Chatterjee and Others

APPELLANT

Vs

Eastern Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : 90 CWN 58

Hon'ble Judges : P.K. Mukherjee, J;M.M. Dutt, J

Bench : Division Bench

Advocate : A. P. Chatterjee, R.K. Ghosal and H. K. Saharay, for the Appellant; Bhaskar Gupta, Ranajit Mitra, Sudhanshu Si, Abhijit Chatterjee and Ashok Dhoro, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This appeal has been preferred by the workmen of Selected Fatka Colliery against the judgment of a learned single Judge of this Court whereby the learned Judge made absolute the Rule Nisi issued on the application of the respondent no. 1, Eastern Coal Fields Limited, a Government Company, under article 226 of the Constitution and quashed the order dated October 11, 1982 of the Central Government Industrial Tribunal-cum-Labour Court No. 3, Dhanbad. The appellants who are 1175 in number were workmen of the Selected Fatka Colliery. Under the Coal Mines (taking over management) Ordinance, 1973, which came into effect from January 31, 1973, the management of the said colliery was taken over by the Custodian. The Custodian, however, came to know that a Receiver had been appointed by the Calcutta High Court in respect of the said colliery sometime in 1952 in a Mortgage Suit filed in 1950. After coming to know of the same, the Custodian handed over possession of the colliery to the Receiver. The Ordinance was repealed and replaced by the Coal Mines (taking over management) Act, 1973. Thereafter, the Coal Mines (Nationalisation) Act, 1973, hereinafter referred to as the Nationalisation Act" was enacted and it came

into force with effect from 1st May, 1973 The Nationalisation Act, was amended by the Coal Mines Nationalisation (Amendment) Act, 1976. By the Amendment Act, a new sub-section (3) was inserted in section 3 of the Nationalisation Act. Sub-section (3), inter alia, provides that no person other than the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government etc. shall carry on coal mines operation in India, in any form.

2. It is the case of the respondent writ petitioner that it obtained possession of the colliery on or about October 14, 1976 after the Receiver was appointed by this Court. After taking possession of the colliery, it found that the colliery was completely damaged due to improper and unscientific operation of the mines at the time the Receiver was in possession. It is alleged that it was only in February 1979 that the respondent writ petitioner was able to raise coal from the colliery.

3. It appears that in 1979, the workmen of the colliery, namely, the appellants filed three applications u/s 33C(2) of the Industrial Disputes Act, 1947 before the Central Government Industrial Tribunal-cum-Labour Court No. 3, Dhanbad, hereinafter referred to as the Tribunal. These three applications were registered by the Tribunal as L.C. Applications Nos. 8 of 1979, 9 of 1979 and 10 of 1979. In L. C. Application No. 8 of 1979, the workmen prayed for wages from 1st May, 1976 up to the date when they were admitted first and paid their wages. In L. C. Application no. 9 of 1979, they claimed sick-leave, overtime etc. during the year 1975-76 and in the third application they claimed the refund of compulsory deposit which had been recovered from their wages by the Receiver but not deposited by him with the appropriate authority under the Compulsory Deposit Scheme. The claims, of the workmen were opposed by the respondent writ petitioner by filing written statements thereto.

4. The Tribunal, after considering the facts and circumstances of the case and the evidence adduced on behalf of the parties, allowed the L. C. Applications nos. 8 and 10. It was held by the Tribunal that all the applicants excepting applicants nos. 1 and 2, were entitled to their salaries from April 1976 upto the time when they were paid their salaries by the respondent writ petitioner and also the C.D.S. amounts deposited by them from the date of nationalisation, and that all such amounts were payable by the respondent writ petitioner. The other application being L. C. Application no. 9 of 1979 was rejected by the Tribunal. Thereafter Tribunal directed as follows :

It will now be seen that in view of the above findings the only question is as to the actual amount which they are entitled to receive from the opp. party no. 1 who is liable to pay the same. In the petition no details have been given as to from which particular date to which particular date these applicants are entitled to get their salary and what was their salary prior to April 1976. The amount of C.D.S. deduction from the salary of each of the applicants entitled to receive the same is also not mentioned in case no. 10 of 1979. In the circumstances, the applicants are directed to give detailed statements of the dues of their salaries

and C.D.S. within a month from the date of this order. The management of opp. party no. 1 is also directed to give the details within the said period. After the details are submitted the scrutinised final order regarding the actual amount payable to each of the applicants, except applicant nos. 1 and 2 will be passed in Part II judgment.

The Tribunal directed the parties to file the statements of the dues of the workmen on November 11, 1982.

5. Being aggrieved by the said order of the Tribunal, the respondent writ petitioner. Eastern Coal Fields Limited, filed a writ petition against the said order and obtained a Rule Nisi out of which this appeal arises.

6. At the hearing of the writ petition, it was contended on behalf of the appellants that this Court had no jurisdiction to entertain and hear the writ petition. On the other hand, it was contended on behalf of the respondent writ petitioner that the applications under, section 33C(2) of the Industrial Disputes Act were not maintainable.

7. The learned Judge came to the finding that this Court had Jurisdiction to entertain and hear the writ petition and overruled contention of the appellants of the contrary. The learned Judge upheld the contention of the respondent writ petitioner that the applications u/s 33C(2) of the Industrial Disputes Act were not maintainable. Accordingly, the learned Judge made the Rule Nisi absolute and quashed the said order of the Tribunal. Hence, this appeal

8. First of all we may consider the question of jurisdiction of this Court to entertain the writ petition. It has been strenuously (sic) by Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel (sic) on behalf of the appellants that the colliery and the (sic) being situated outside the territorial jurisdiction of (sic)court, the impugned order of the Tribunal cannot give rise (sic)any cause-of-action within the territorial limits of this Court, on the other hand, it is submitted by Mr. Gupta, learned Counsel appearing on behalf of the respondent writ petitioner that as the impugned order of the Tribunal was sent to the respondent writ petitioner at its registered office at Sanatoria in the district of Hroewan part of the cause-of-action arose within the State of West Bengal, and accordingly, the Calcutta High Court has jurisdiction to entertain the writ petition. It is also submitted by Mr. Gupta that as some facts which are the basis of the claim of the workmen in those three applications u/s 33C(2) of the Industrial Disputes Act, having originated in West Bengal, a part of the cause-of-action also arose in West Bengal.

9. It appears that by the impugned order, the Tribunal directed the parties including the respondent writ petitioner to give the details within a month from the date of the order. A copy of the order was sent by the Tribunal to the respondent writ petitioner to its registered head office at Sanctoria, in the district of Burdwan. Much reliance has been placed on behalf of the respondent writ petitioner upon the fact of the communication of the impugned order by the

Tribunal to the respondent writ petitioner at its said registered office. In our opinion, even in spite of the fact that a copy of the order was sent by the Tribunal at the registered head office of the writ petitioner, yet it did not give rise to a part of the cause-of-action at the place where it was sent, that is, Burdwan, within West Bengal. The Tribunal was under no obligation to send a copy of the order to the respondent writ petitioner or to any other parties. Sending of the impugned order was not a pre-condition to the filing of a suit or an action for challenging the legality and propriety thereof. In a Full Bench decision of this Court in *Bansi and Others Vs. Governor-General of India in Council*, ., it has been held that the fact that the notice of the claim u/s 77 of the Railways Act need not precise a suit for refund or for compensation necessarily leads to the conclusion that the service of such notice cannot form part of the cause-of-action. In that case, the Full Bench has quoted with approval the observation of Brett J in *Cooke v. Gill*, (1873) 8 CP. 107 as follows:

Cause-of-action has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse.

The Full Bench also quoted with approval the observation of Fry L.J. in the same case of *Cooke v. Gill*, namely, "everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause-of-action." If any suit had been instituted by the respondent writ petitioner challenging the legality of the impugned order of the Tribunal, there can be no doubt that the fact that a copy of the impugned order was sent to the respondent writ petitioner at its registered head office at Sanctoria, in West Bengal, was not required to be pleaded, accordingly, in our view, the fact that a copy of the impugned order was communicated to the respondent writ petitioner did not give rise to a part of the cause-of-action within the territorial jurisdiction of the Calcutta High Court.

10. Mr. Gupta, learned Counsel for the respondent writ petitioner has, however, placed reliance upon a Bench decision of this Court in *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, . In that case, certain orders were passed in New Delhi under the Aluminium Control Order, 1970. In that case, the respondent, Hindusthan Aluminium Corporation Limited filed a writ petition in this Court challenging the validity of the said orders under the Aluminium Control Order, 1970. A preliminary objection was taken on behalf of the appellants to the effect that this Court had no jurisdiction to entertain the writ petition of the respondent. It was pointed out on behalf of the appellants that the Aluminium plant of the Hindusthan Aluminium Corporation Limited was situate at Renukut, in the district of Mirzapur, within the State of Uttar Pradesh, outside the jurisdiction of this Court. It was, accordingly, submitted on behalf of the appellants that no part of the cause-of-action arose within the jurisdiction of this Court and, as such, this Court had no jurisdiction to entertain the writ petition. The case of the respondent was, however, that in view of the impugned orders, it had been suffering loss in its business in the sale of aluminium and

its products produced and manufactured by it in Calcutta where its principle office is situate. The Bench took the view that as the respondent had been suffering loss in its business in Calcutta as a result of the impugned orders a part of the cause-of-action arose in Calcutta and this Court had jurisdiction to entertain and hear the writ petition of the respondent. The Bench also referred to the well-settled definition of cause-of-action as meaning every fact which the plaintiff must prove, if traversed, in order to succeed in the suit. Therefore, if the Hindusthan Aluminium Corporation Limited had to file a suit in Calcutta, the fact as a result of the impugned orders it had been suffering loss in its business in Calcutta was to be pleaded and proved before it could challenge the validity of the impugned orders. In the instant case, as stated before, the fact that a copy of the impugned order was communicated to the respondent writ petitioner at its registered office in West Bengal is not required to be pleaded Hind "proved.

11. It is, however, the case of the respondent writ petitioner that some of the facts which are the basis for the claim of the workmen in the said applications u/s 33C(2) of the Industrial Disputes Act having originated in Calcutta, a part of the cause-of-action should be held to have arisen in Calcutta and so this Court can entertain and dispose of the writ petition. It has been already noticed that in the Mortgage Suit filed sometime in 1950 in the Calcutta High Court, a Receiver was appointed in respect of the Selected Fatka Colliery. It is because of the appointment of the Receiver by the Calcutta High Court in the said suit and his possession of the Colliery, the Custodian could not effectively take possession of the colliery which was run by the Receiver for a part of the period of claim of the workmen. Further, it is the case of the workmen that they had paid the amounts of the compulsory deposit to the Receiver who, however, did not deposit the same with the authorities under the compulsory deposit scheme. The workmen have also claimed the refund of the amounts of compulsory deposit paid to the Receiver. Thus the appointment of the Receiver by the Calcutta High Court was a material fact which, having originated in Calcutta, a part of the cause-of-action may be said to have arisen in Calcutta. This view finds support from a Bench decision of this Court in *Uma Sankar Chatterjee v. Union of India and others*, 86 C.W.N. 348. In that case, it was held that the facts, on the basis of which charges were framed against the appellant and he was removed from service on the basis of such charges, constituted a part of the cause-of-action. The said facts having originated in Calcutta, a part of the cause-of-action also arose in Calcutta. Here also, as stated already, the material fact, that is, the appointment of the Receiver having been made by the Calcutta High Court, a part of the cause-of-action should be held to have arisen in Calcutta and, accordingly, this Court has jurisdiction to entertain and dispose of the writ petition filed by the respondent writ petitioner.

12. The next question relates to the maintainability of the applications under section. 33C(2) of the Industrial Disputes Act. Before the Tribunal, the respondent writ petitioner disputed the relationship of employer and employees between it and the appellants at the material time and. denied the right of the

appellants to claim wages from the respondent writ petitioner for the period in question. In *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, it has been observed by the Supreme Court that a proceeding u/s 33C(2) is a proceeding, generally, in the nature of execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. Further, it has been observed that this calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjusted or, otherwise, duly provided for. Relying upon the above decision of the Supreme Court, it has been urged by Mr. Gupta that the respondent writ petitioner having disputed and denied the relationship of the employer and employees between it and the appellants, the Tribunal had no authority to decide that question u/s 33C(2) of the Industrial Disputes Act. It is submitted that the appellants should first of all establish their right to claim wages from the respondent writ petitioner for the period in question in a proceeding u/s 10 of the Industrial Disputes Act, but so long as their right is not determined or adjudged, they are not entitled to claim implementation or execution of "that right before the Tribunal u/s 33C(2)".

13. There can be no doubt that the proceeding before the Labour Court or the Tribunal is in the nature of an execution proceeding and, as observed by the Supreme Court in the case of *Central Inland Water Transport Corporation Ltd.* (supra), the calculation or computation of money or benefit claimed by a workman follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. So unless a right to the money or benefit is established or previously adjudged, or, otherwise provided for, an application u/s 33C(2) will not be maintainable.

14. Now let us consider whether or not the appellants have been able to substantiate their claim for wages for the period in question on the basis of an existing right. Mr. Arun Prokash Chatterjee, learned.Senior Standing Counsel for the appellants has drawn our attention to section 14(1) of the Nationalisation Act. It is submitted by the learned Counsel that in view of section 14(1), the appellants have the right to claim wages from the respondent writ petitioner for the disputed period. Section 14(1) of the Nationalisation Act provides as follows :

14(1). Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been, immediately before the appointed day, in the employment of a coal mine shall become, on and from the appointed day, an employee of the Central Government or, as the case may be, of the Government Company in which the right, title and interest of such mine vested under this Act, and shall hold office or service in the coal mine with the same rights to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such coal mine had not been transferred to, and vested in, the Central Government or the Government Company, as the case may be, and continue to

do so unless and until his employment in such coal mine is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Central Government or the Government Company.

15. It is not in dispute that the appellants have been, immediately before the appointed day, in the employment of the selected Fatka Colliery. Accordingly, in view of section 14(1) of the Nationalisation Act, the appellants became, on and from the appointed day, the employees of the Central Government and, thereafter, the respondent writ petitioner, the Government Company. Having become employees of the Central Government of the respondent writ petitioner, the appellants would be entitled to hold office or service in the colliery with the same rights to pension, gratuity and other matters as would have been admissible to them, if the rights in relation to the colliery had not been transferred to and vested in the Central Government or the respondent writ petitioner. The provision of section 14(1) is clear and unambiguous.

16. It is, however, urged on behalf of the respondent writ petitioner that as the coal mine was under the custody of the Court, the vesting of the same in the respondent writ petitioner u/s 3(1) of the Nationalisation Act" did not take place, We are unable to accept this contention. The vesting of the mine u/s 3(1) of the Nationalisation Act has not been made subject to any condition or restriction. The fact that the colliery was in the custody of the Court was quite immaterial and irrelevant for the purpose of vesting u/s 3(1) of the Nationalisation Act. There is no substance in the contention made on behalf of the respondent writ petitioner and it is overruled.

17. It is next contended by Mr. Gupta that if the working of the mine is illegal, the workmen cannot claim their wages from the Government on the ground of vesting of the mine. In other words, it is submitted, section 14(1) of the Nationalisation Act cannot be invoked in a case where illegal mining was going on. Further, it is submitted that the right of the workmen to claim wages during illegal mining is not an established right within the meaning of section 14(1) of the Nationalisation Act and, as such, it does not come u/s 33C(2) of the Industrial Disputes Act.

18. We may consider the contentions of the respondent writ petitioner. The provision of section 14(1) of the Nationalisation Act besides being clear and unambiguous, is mandatory in operation. As soon as it is found that a workmen has been, immediately before the appointed day, in the employment of the coal mine, he shall become on and from the appointed day, an employee of the Central Government or, as the case may, of the Government Company. It has been noticed earlier that the appellants had been the workmen of the coal mine in question immediately before the appointed day. In view of the said undisputed fact, the appellants became the employees of the Central Government or the respondent writ petitioner on and from the appointed day. This right of the appellants, in our opinion, cannot be disputed and denied on the ground that the working of the mines was illegal. Moreover, it is not the case of the respondent

writ petitioner that the appellants had been illegally working the mine. It may be. that the suit in which a Receiver was appointed by the Calcutta High Court was instituted by the erstwhile owner mala fide with a view to retaining possession of the colliery but, in our opinion, the workmen who were innocent and had no hand in the matter cannot be deprived of the wages during which the colliery was in the custody of the Receiver. The appellants having been admittedly the workmen of the colliery immediately before the appointed day, have become the employees of the Central Government or the respondent writ petitioner on and from the appointed day, and we do not think the appellants should be deprived of their wages from the respondent writ petitioner for the period in question. In our view, when a statute confers a particular right on a certain category of persons, the Tribunal or Labour Court will not be justified in considering matters extraneous to the provisions of the statute conferring the right. After carefully considering the facts and circumstances of the case and the provision of section 14(1) of the Nationalisation Act, we do not think that the respondent writ petitioner had any reasonable justification for raising the dispute as to the relationship of employer and employees between it and the appellants during the period in question. We, therefore, hold that the appellants are entitled to claim wages for the disputed period from the respondent writ petitioner under the provision of section 33C(2) of the Industrial Disputes Act. In other words, the applications of the appellants u/s 33C(2) were maintainable so far as their claim to wages for the period in question was concerned.

19. The claim of the appellants for the refund of the amounts paid by them to the Receiver in regard to the Compulsory Deposit Scheme of the appellants, however, stands on a different footing. This claim is not covered by section 14(1) of the Nationalisation Act. Admittedly, the amounts were paid to the Receiver who, it is alleged, did not deposit the same with the appropriate authority under the Compulsory Deposit Scheme. Neither the Central Government nor the respondent writ petitioner had anything to do with the amounts realised by the Receiver from the wages of the appellants on account of Compulsory Deposit Scheme. The respondent writ petitioner was not also in possession of the colliery at that time. The remedy of the appellants lay before this Court which appointed the Receiver. They could also sue the Receiver for the recovery of the amount, but we fail to understand how the Central Government or the respondent writ petitioner can be made liable for the refund of the amount which never reached them. The Tribunal was not, therefore, justified in holding that the respondent writ petitioner was liable to refund the amounts that were realised by the Receiver from the wages of the appellants on account of the Compulsory Deposit Scheme but not deposited by him the proper authority under the said scheme.

20. For the reasons aforesaid, we set aside the order of the learned Judge in so far as it held that the applications u/s 33C(2) of the Industrial Disputes Act was not maintainable. The appellants will be entitled to receive salaries or wages from the respondent writ petitioner for the disputed period. The claim of the appellants for the refund of the Compulsory Deposit Scheme amounts is not

maintainable u/s 33C(2) and is, accordingly, disallowed without prejudice to their rights to recover the same from the Receiver in accordance with law. The appeal is allowed in part. There will, however, be no orders as to costs.

The prayer for stay of the operation of this judgment as made on behalf of the respondent writ petitioner is disallowed.

Paritosh Kumar Mukherjee, J.

I agree.