
(2002) 12 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 65 of 1973

Thaper Intrafor Company of India Ltd.

APPELLANT

Vs

J.G. Kumarmangalam

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 1, 2, 25A, 26(2), 3

Citation : (2003) 1 ILR (Cal) 172

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Nigan Chakraborty, D.N. Roy, S. Sarkar and I. Roy, for the Appellant;
Alok Banerjee and P.K. Das for Respondent Authority, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—The Petitioner No. 1 is a Public Limited Company incorporated under the Companies Act, 1956. The Petitioner No. 2 Company. However, the writ petition had been affirmed by one Sri Har Charan Dass, claims to be one of the Directors of the Petitioner No. 1 Company.

2. However, this high Court had originally entertained the writ petition, a Rule was issued and affidavits were exchanged between the parties long back. Now the matter is placed under the heading of "old matters" and subsequently under "old adjourned matters".

3. Previously the writ petition was moved only for the purpose of taking the delivery of the goods which were lying within the premises of the concerned coal mines under the Central Coalfields Authority, contesting Respondent herein. But by way of challenging vires of the amendment of Coal Mines (Nationalisation) Act, an application was moved before the Court for the purpose of adding such additional grounds etc. which was accordingly allowed. Therefore, at the present moment, Court is concerned about both the grounds.

4. On November 29, 1971, Thapar Intrafor Company of India Ltd. entered into a

contract with one United Collieries Limited for the purpose of sinking two pits at a colliery in Bihar. On January 30, 1973 an ordinance was promulgated being known as "Coal Mines (taking over management) Ordinance", 1973 with retrospective effect from January 10, 1973.

5. It appears from the affidavit of the office of the custodian, Central Sounda Colliery that the Petitioners have not fulfilled its obligation under the contract dated November 29, 1979. No reason has been disclosed why the work was not commenced in terms of the contract. The plant and machinery are admittedly lying at the Central Sounda Colliery and the said machinery having within the colliery premises given, has vested in the Central Government in view of the provisions of the Act.

6. Therefore, three aspects are coming forward. First is nonperformance of contract. The second one is lying of plant and machinery of the Petitioners within the colliery premises. Third one is the said machineries are part & parcel of the "Coal Mines" as per the Act. u/s 2(b) of the Coal Mines (Nationalisation) Act, 1973 "Coal Mines" means a mine in which there exists one or more seams of coal. u/s 2(h) of the said Act a descriptive meaning of mine is given which is as follows:

(h) "mine" means any excavation where any operation for the purpose of searching for or obtaining for minerals has been or is being carried on, and includes-

(i) all brings and bore holds;

(ii) all shafts, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) ail conveyors or aerial ropeways provide for bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all lands, buildings, works adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings in, or adjacent to, a mine and used for the purpose of the mine;

(vii) all workshops (including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which workshops stand) in, or adjacent to, a mine and used substially for the purposes of the mine or a number of mines under the same management;

(viii) all coal belonging to the owner of the mine, whether is stock or in transit, and all coal under production in a mine;

(ix) all power stations in a mine or operated primarily for supplying electricity for the purpose of working the mine or a number of mines under the same management;

(x) all lands, buildings and equipments belonging to the owner of the mine, and in, adjacent to or situated on the surface of, the mine where the washing of coal obtained from the mine or manufacture, therefrom, of coke is carried on;

(xi) all lands and buildings (other than those referred to in Sub-clause (x), wherever situated, if solely used for the location of the management, sale or liaison offices, or for the residence of officers and staff, of the mine;

(xii) all other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situated and current assets, belonging to a mine, whether within its premises or outside.

7. Therefore, the aforesaid properties can only be construed as properties of the mine for the purpose of acquisition and/or vesting of the properties of the mine other than "Coal mine" itself. From the plain reading of such Section 1 do not find any provision for withholding properties of a third party other than the properties of the "Coal Mine". However, subsituation of Clause XII as aforesaid 1978 with a retrospective effect from May 1, 1973 can be an arguable point. Even then such provision is made for all other fixed assets, movable and immovable, belonging to the owner of the mine, wherever situated, and current assets, belonging to a mine, whether within its premises or outside cannot give rise a right of the authority for vesting towards the central Government under such Act. Section 2(h)(xii) cannot be read in isolation with the other parts of the Section. This is an additional clause in the sense of residuary but that residuary is belonged to the mine. Hence, the acquisition of rights of owners in respect of Coal Mines u/s 3 of the Act cannot be made applicable in respect of third party. In other words, the owners cannot have any right, title, interest of the property of the third party which they wanted to use as per the contract. Admittedly the property had not been used for any purpose contract. Therefore the only question is that Petitioners can be treated as third party or not.

8. In the writ petition, the Petitioners not only raised grievance in respect of releasing such goods but tried to establish ultra vires of the Act. Previously such part was incorporated by way of amendment by a Bench of this Court and notice was issued upon the Learned Attorney General. However, at this stage whether the issue of ultra vires becomes infructuous or not will be looked into before granting any relief whatsoever in respect of merit of the matter.

9. Mr. Nigam Chakraborty, learned Senior Counsel, appearing for the Petitioners firstly cited a judgment reported in Coal Mines Authoirty Ltd., Coal Mines Authority Ltd., Calcutta and Others Vs. Associated Cement Companies Ltd., Bombay, There I find that a Division Bench of the Madhya Pradesh High Court held that the articles which were temporarily brought on premises for specific purpose from outside prior to coming of the Nationalisation Act cannot be said to be the property of the mine.

10. He also cited a judgment reported in Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, , whereunder the ratio of the Madhya Pradesh,High Court was

approved. A three Judges Bench of the Supreme Court was pleased to hold that any or every property belonging to another person which happens on the, surface of the "mine" of adjacent to it, is not taken away. Hence, only those properties of another person which fall within the definition of the "mine" and which are necessary for a proper functioning of the "mine" are to be taken into account. The definition itself takes care of the subject by stipulating wherever necessary that such properties must be used for the purpose of mine, whether the purpose is specified or general.

11. According to Mr. Chakraborty neither the machineries are owned by mine nor those have been used for the purpose of operation of mine.

He further contended that Section 25A was inserted by amendment on May 27, 1978. Such Section 25A dealing with the issue of notices to owners of the Coal mines and managing contractors etc. It speaks that after meeting the liabilities of persons whose claims have been admitted under the Act, the Commissioner shall notify, in such manner as he may think fit, the mine or money available with him and specify in such notification a date within which the owners of the Coal Mines, the managing Contractors and the owners of the machinery, equipment or other property which has vested in the Central Government or a Government company under this Act and which does not belong to the owners of the Coal Mines may apply to him for payment. Where any application is made under Sub-section (1), the Commissioner shall (under Sub-Section 26(2)), after satisfying himself as to the right of the applicant and in case doubt or dispute refer the matter to the Court as per Section 26(2) of the Act. Under Sub-s.(3) it is declared that the enquiries as per the 4th column of the Schedule shall not be deemed to be conclusive as to the right, title, interest of the person in relation to any column specified in the corresponding entries in 2nd column of the Schedule and evidence shall be admissible to the right, title, interest of any person in relation to such column. The Court means principal Civil Court of Original Jurisdiction within the local limits of whose jurisdiction the Coal Mine is situated.

12. He cited a judgment reported in Waman Rao and Others Vs. Union of India (UOI) and Others, , with other matters whereunder a Constitution Bench of the Supreme Court held the theory that the Parliament cannot exercise its amending power so as to damage or destroy the basic structure of the Constitution which propounded and accepted for the first time in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . This is one reason for upholding the laws incorporated in the 9th Schedule before April 24, 1973 on which date the judgment in kesavananda Bharati was delivered.

Mr. Alok Banerjee, teamed Counsel, appearing for the contesting Respondents has drawn my attention to para. 5 of the petition and said that in Sub-para, (c) thereunder it is categorically stated by the Petitioners that on or about November 29, 1971 the concerned colliery issued a work order which contains various terms and conditions. He has also drawn my attention to para. 10. of the petition where I find the Petitioners stated that at present some of the plants and

machineries are lying in the colliery in connection with the said contract and some are lying elsewhere in connection with the works as mentioned above. Therefore the dispute is coming under zone of consideration of the Commissioner as per law.

13. Thereafter he cited an unreported judgment of the Supreme Court dated September 18, 1986 i.e. W.P. No. 3474 of 1982 along with other matters in *Lodha Colliery Company Ltd. and Anr. etc. etc. v. Union of India and Ors. etc.* W.P. No. 3474 of 1982, where under a five Judges Bench of the Supreme Court held that the constitutional validity of the Coking Coal Mines (Nationalisation) Act, 1972 and the "Coal Mines" (Nationalisation) Act 1973 (as amended) by the Coal Mines Nationalisation Laws (Amendment) Act, 1978 are covered by the ratio of the decision of the Supreme Court in *Tara Prasad Singh and Others Vs. Union of India (UOI) and Others*, , whereunder the Constitutional validity of the similar amending Act of 1976 was upheld by the Court. The constitutional validity of these statutes as amended by the amending Act, 1978 must therefore, be upheld on the same parity of reasoning, accordingly the writ petitions and special leave petitions were dismissed. But it was made clear that if there are any other points raised in the writ petitions and special leave petitions it must not be deemed to have expressed any opinion on the validity on those points and it will be open to the Petitioners to raise them in appropriate proceedings in the High Court. According to Mr. Banerjee, in view of such judgment there is no avenue open for the Petitioners to challenge the vires. Incidentally if the properties are declared as properties of the mines, at best, the Petitioners will have right of getting compensation.

14. He cited two other judgments being reported in *Union of India (UOI) and Others Vs. United Collieries Ltd. and Others*, and *Kali Prasad Agarwalla (Dead by L Rs.) and Ors. v. Bharat Coking Coal Ltd. and Ors.* AIR 1989 S.C. 1530 to give the meaning of the definition of the mine u/s 2(h)(xii) of the Coal Mines (Nationalisation) Act, 1973. Factually, I find that a staff car of the Technical Advisor was construed as property of the "mine". In the second judgment as aforesaid Supreme Court held that the land adjacent to a mine and used for the purpose of carrying mining operations in respect of part of seam lying immediately below the surface is called as "mine". Therefore, the ratio of the cited judgments by the Learned Counsel of the Petitioners cannot be acceptable.

15. In reply thereto, Mr. Chakroborty has drawn my attention to the referred unreported judgment of the Supreme Court and said that in the case of *Taraprasad Singh* reported in *Taraprasad Singh v. Union of India (supra)* the vires of the retrospective insertion was not under challenge. Therefore vires can be challenged herein.

16. According to me, in view of the ratio of the Constitution Bench of the Supreme Court reported in *Taraprasad Singh v. Union of India (supra)* it cannot be said that, by Nationalisation Amendment Act, the right to property of a person has been acquired without the payment of any amount and one has been

unreasonably deprived of his right to carry on the business of the mining, therefore held that 1976 amendment is not ultra vires. In the said unreported judgment the Supreme Court held that the constitutional validity of 1972 Act and 1973 Act as amended by the Amending Act of 1978 is covered by the ratio of the aforesaid decision whereunder 1976 amendment was upheld. Thereafter actual order was passed by saying that the constitutional validity of these statutes as amended by the Amending Act, 1978 must, therefore, be upheld on the same party of reasoning. Hence, although cryptic, it can not be said Supreme Court was unmindful in considering the ratio of the judgment in *Taraprasad Singh v. Union of India* (supra). Therefore such part can not be said to be open for consideration. If the Petitioners are aggrieved by such observation and order, they could have approached the Supreme Court to give clarification. The other points which were directed to be kept open means individual factual aspects of the matters. But such observation can not be co-related with the point of vires which has already been upheld by the Supreme Court. Moreover where is the vires ? If there is any doubt about the ownership of any articles or goods even when the reference can be made to the Commissioner and he is entitled to refer the matter to the Civil Court. Therefore, one is not remedyless. Hence the remaining question before this Court is whether the Petitioner Company is at all third party or not. Two judgments reported in *Union of India and Ors. v. United Collieries Ltd. and Ors.* (supra) and *Kali Prasad Agarwalla (Dead by L Rs.) and Ors. v. Bharat Coking Coal Ltd. and Ors.* (supra) are factually considerable for the present purpose. The first judgment has sound face value in view of the reference since it has dealt with the meaning of the "mine" u/s 2(h)(xii) of the Act. The second judgment has dealt with immovable property admittedly used for the purpose of "mine". Both the judgments were delivered long after the introduction of amendment of the Act be it effective prospectively or be it effective retrospectively. As per the ratio of *Union of India and Ors. v. United Collieries Ltd. and Ors.* (supra) parliament by an enlarged definition of "mine" in Section 2(h) has indicated the nature of the properties that vest and the question whether a particular asset is taken within the sweep of the section depends on whether it answers the description given therein. Factually it was held therein that a staff car of the Technical Advisor is a fixed asset of the mine. "Fixed assets" in general comprise those assets which are held for the purpose of conducting a business in contradistinction to those assets which the proprietor holds for the purpose of converting into cash and they include real estate, building, machinery etc. Merely because the Technical Advisor was putting the staff car to his personal use or for multifarious activities of the Thapar Group of Industries would not alter the true legal position since the subsequent user for a different purpose was not really germane. There, I find that Thapar Group of Industries were actually the user of the vehicles one of which carrying out the coal mines. It was held that the said vehicle was purchased by Messrs. Karamchand Thapar and Bros. (Coal Sales) Limited, Delhi in the year, 1966 and was transferred to Respondent No. 1 M/s. United Collieries Limited, the owners in relation to North Chirimiri Collieries and it was, therefore owner of the said

vehicle, it is an admitted position that by a scheme of amalgamation M/s. Thapar Intrafor Company of India Limited merged with M/s. Karmchand Thapar and Bros. (Coal Sales) Limited. Such M/s. Karmchand Thapar and Bros. (Coal Sales) Limited was running a colliery which is known as United Collieries Limited. On November 29, 1971 M/s. Thapar Intrafor Company made a contract with United Collieries Limited for the purpose of sinking two pits at a colliery in Bihar. By way of taking over the management, properties of such colliery was taken over. The plea of M/s. Thapar Intrafor Company of India Limited is that since it is not doing coal business and entered into a contract with M/s. United Collieries Limited and admittedly work has not been done, therefore, the machineries of such Petitioner cannot be vested with the Coal Mines as per the Section 2(h) of the Act. Such M/s. Thapar Intrafor Company of India Limited has no locus standi, now, to represent the case. Admittedly M/s. Karmchand Thapar and Bros. (Coal Sales) Limited stepped into the shoes of such Company by way of amendment. As because both the Companies amalgamated after 1978 a fresh cause of action can not arise in a pending writ petition. If arises, that will obviously become subject matter of second writ. Therefore by such amalgamation cause of action relates back to the original date of initiation of the proceeding. The substituted Company admittedly a Company having Coal Mines business whose properties are vested. Therefore, whenever a new Company steps into the shoes of the old one, the assets and properties of such Company must have to be merged with the new Company having a business of Coal. Hence the properties of such companies cannot be said to be not the properties of the Company. Therefore, when the three Judges Bench of the Supreme Court, reported in *Union of India and Ors. v. United Collieries Ltd. and Ors.* (supra) already held that even a staff car of the Technical Advisor of the Petitioner Company herein attached to the United Collieries Limited said to be the properties of the "Mine" the present case in respect of self same parties is not rested on a better footing than that one. Therefore, in view of the changed circumstances this Court cannot hold that the machineries of the Petitioner Company is not of "mine".

17. Under such circumstances, the writ petition stands dismissed. The interim orders, if any, stand vacated. The Respondents will be entitled to encash the bank guarantee. However, no order is passed as to costs. However, the Petitioners are not debarred from making any application before the Commissioner for the purpose of redressal of grievance, if any.

18. Xeroxed certified copies of judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.

19. All parties are to act on a signed copy minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the officer of the Court in respect as above.