

(1986) 04 OHC CK 0030
In the Orissa High Court
Case No : Criminal Appeal No. 161 of 1981

The Union of India (UOI)

APPELLANT

Vs

M.P. Chandak

RESPONDENT

Date of Decision : 18-04-1986

Acts Referred:

Mines Act, 1952 — Section 2, 5(1), 6(3), 70, 72C(1)

Citation : (1986) 61 CLT 593

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : L. Rath, Central, for the Appellant; R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—The Respondent and two others were charged for offences under Sections 70, 72C(1)(a) and 73 of the Mines Act, 1952 (referred to as the "Act") for contravention of several provisions of the Act, the Mines Rules, 1955 and the Metalliferous Mines Regulations, 1961 (hereinafter referred to as the "Rules" and "Regulations"). After trial, the Respondent alone was convicted and sentenced to different terms of imprisonment and fine, but the two others were acquitted of the charges. Against the order of conviction and sentence the Respondent preferred a criminal appeal before the learned Sessions Judge, Puri, who acquitted him of the charges. Therefore, this criminal appeal has been filed by the Union of India for setting aside the order of acquittal and restoration of the order of conviction and sentence.

2. The facts are very brief Tapang Stone Quarry is owned by M/s. Calcutta Company Limited. Tapang within Khurda police station of which the Respondent was the agent. In a particular quarry named Changra, an accident took place on 3-5-1973 resulting in the death of one Ananda Pradhan and serious injuries to one Hadu Sethi. The accident was on account of non-observance of safety measures provided in the Act, the Rules and the Regulations and intentional negligence of the Respondent. Had the safety measures been taken and the

provisions of the Act, the Rules and the Regulations complied with, the accident could have been avoided. Even after the accident took place the Appellant was not informed thereof by notice. Therefore, the Joint Director of Mines Safety, Chaibasa region, within whose jurisdiction the Tapang Stone Quarry is situate, after completion of due inquiry, submitted the prosecution report.

3. It appears from the impugned judgment that the factual aspects of the case leading to the conviction and sentence were not challenged before the learned Sessions Judge. The appeal was confined to the maintainability of the case on the sole ground that the Joint Director of Mines Safety, Chaibasa region was not authorised under law to submit the prosecution report and so the entire trial was vitiated. The learned Sessions Judge accepted the appeal and held that the Joint Director of Mines Safety, Chaibasa region was not authorised under law to submit the prosecution report, the order of taking cognizance was illegal and the trial was vitiated. Accordingly he acquitted the Respondent.

4. The only point for consideration in the appeal is whether the Joint Director of Mines Safety, Chaibasa was the Inspector of Mines of Orissa region, where the Tapang Stone Quarry is situate and was authorised to submit the prosecution report. If the answer is in the affirmative, the appeal is bound to succeed and the order of conviction restored. If the answer is in the negative, the appeal must fail.

5. Section 75 of the Act is reproduced for easy reference:

75. Prosecution of owner, agent or manager - No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

It thus appears that three categories of officers are entitled to submit a prosecution report in case an offence under any of the provisions of the Act has been committed. They are - (i) the Chief Inspector of Mines, (ii) the District Magistrate and, (iii) the Inspector of Mines authorised by the Chief Inspector of Mines. It is stated that "Chief Inspector" and "Inspector" as decided in Section 2(d) and (i) respectively mean "Chief Inspector of Mines" and "Inspector of Mines".

Section 5(1) of the Act is also quoted for easy reference:

5. Chief Inspector and Inspectors - (1) The Central Government may, by notification in the official Gazette, appoint such a person as possesses the prescribed qualification to be Chief Inspector of Mines for all the territories to which this Act extends and such persons as possess the prescribed qualifications to be Inspectors of Mines subordinate to the Chief Inspector.

It is now to consider in view of the notifications issued by the Central Government from time to time and admitted into evidence in the case whether the Joint Director of Mines Safety was an Inspector of Mines and had been

authorised by a general or special order in writing by the Chief Inspector of Mines to submit prosecution reports for offences under the Act.

6. The relevant part of exhibit 3, a notification dated 30-5-1967 issued by the Government of India, Ministry of Labour, Employment & Rehabilitation (Department of Labour and employment) is quoted for easy reference:

No. 8/24/66-M.I. Pursuant to this Department's Notification of even number dated the 3rd April, 1967 changing the designation from "Chief Inspector of Mines" to "Director General of Mines Safety", with effect from 1st May, 1967, it is hereby further notified that the following posts will be redesignated as indicated against each:

S. No.

Existing designation

Existing designation.

3.

Regional Inspector of Mines.

Joint Director of Mines Safety.

It will appear therefrom that earlier, by a notification dated 3-4-1967, the designation of the Chief Inspector of Mines was changed to Director General of Mines Safety with effect from 1-5-1967. The designation of the Regional Inspector of Mines was changed to Joint Director of Mines safety. By Ext. 2, a notification dated 2-7-1970 issued by the Government of India, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment-Directorate General of Mines Safety) u/s 6(3) of the Act, 16 inspection regions were created. Out of these 16 inspection regions, 15 regions were grouped into five zones each comprising of two or more regions. Every zone was kept in charge of a Deputy Chief Inspector of Mines, since designated as Director of Mines Safety. Every region was kept in charge of a Regional Inspector since designated as Joint Director of Mines Safety and every sub-region was kept in charge of an Inspector since redesignated as Deputy Director of Mines Safety. In the States of Bihar and Orissa, one region was created, named, Chaibasa Region with headquarters at Chaibasa in Singhbhum district in Bihar. All the mines of Singhbhum district and all the mines of the State of Orissa were kept in the Chaibasa region under the charge of a Regional Inspector since designated as Joint Director of Mines Safety. Ext. 4 is a notification dated 2-7-1979 issued by the Government of India, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment-Directorate General of Mines Safety) u/s 6(3) of the Act. Since it has a great bearing on the centre of controversy it is quoted for easy reference:

No. 4(2)/70-Gen. 121804G.-In exercise of the power conferred on me u/s 6(3) of the Mines Act, 1952, and in supersession of previous orders on the subject, I

Shri R.G. Deo," Chief Inspector of Mines now designated as Director-General of Mines Safety vide Govt. Notification No. 8/24/66MI dated the 3rd April, 1967 do hereby declare as below the local areas within which various persons who have been appointed as Inspectors of Mines u/s 5(1) of the Mines Act, shall generally exercise their respective powers under the Mines Act, 1952 and under the Rules and Regulations framed thereunder:

Designation and Posting of persons appointed as Inspector of Mines.

Area of Jurisdiction.

(1)

(2)

9. Joint Director of Mines Safety posted in a region.

The whole of the respective region.

10. Deputy Director of Mines Safety posted in a region; or sub-region.

-do-

It appears from the notification that the Chief Inspector of Mines, designated as the Director General of Mines Safety had been appointed, by notification dated 3-4-1967 persons as Inspectors of Mines u/s 5(1) of the Act. By this notification those Inspectors of Mines were authorised to exercise their respective powers under the Act, the Rules and the Regulations framed thereunder in respect of specific areas. The Joint Directors of Mines Safety appointed as Inspector of Mines and posted in regions were by this notification authorised to exercise their powers in the whole of their respective regions. By virtue of the authorisation made in Ext. 4, the Joint Director of Mines Safety, Chaibasa who had been appointed as Inspector of Mines by the Chief Inspector of Mines designated as the Director General of Mines Safety was authorised to exercise his powers under the Act, the Rules and the Regulations framed thereunder in respect of the whole of the region which means all the Mines in the Singhbhum district in Bihar and in the State of Orissa. Added to the above, by Ext. 14, the Chief Inspector of Mines designated as Director General of Mines Safety in exercise of the powers conferred on him u/s 75 of the Act generally authorised all officers of his directorate who were subordinate to the Chief Inspector and who had been appointed as Inspectors of Mines u/s 5(1) of the Act to institute prosecutions for any offence under the Act against the owner, agent or the manager of any mine situated within their respective inspection jurisdiction.

A consideration of all the notifications read with Section 5(1), Section 6(3) and Section 75 of the Act makes it crystal clear that the Regional Inspector of Mines designated as Joint Director of Mines Safety of Chaibasa was appointed as an Inspector of Mines within the meaning of Section 2(i) of the Act and was authorised to exercise his powers under the Act, the Rules and the Regulations framed thereunder in respect of the Chaibasa region which includes all the mines

of Singhbhum District in Bihar and in the State of Orissa along with the Tapang Stone Quarry. As the Inspector of Mines, the Joint Director of Mines Safety, Chaibasa was also authorised u/s 75 of the Act to institute prosecutions for violation of the provisions contained therein. The prosecution in this case was instituted by the Joint Director of Mines Safety, Chaibasa who was an Inspector of Mines and so there was no legal defect in the presentation of the prosecution report and for that matter, neither the order of taking cognizance of the offences was illegal nor the trial was vitiated. The judgment of the learned Sessions Judge Jacked a deeper analysis of the notifications of the Central Government issued from time to time and co-relating them. Therefore, when on the basis of the analysis so made, two reasonable views are not possible, and according to my opinion the view expressed by the learned Sessions Judge is wrong and unacceptable, the order of acquittal is bound to be set aside.

7. Now with regard to the sentence: The learned Judicial Magistrate has sentenced the Respondent to undergo substantive terms of imprisonment for the maximum period of four months and has also imposed fines. He has further directed that after the fine amount is realised, a sum of Rs. 1000/- shall be given to the legal heirs of deceased Ananda Pradhan and Rs. 500/- to injured Hadu Sethi as compensation. The occurrence took place on 3-5-1973 and in the meanwnile thirteen years have elapsed. In these circumstances, the ends of justice shall be served if the Respondent is sentenced to pay heavy fines and after realisation thereof if substantial amounts are given as compensation to the legal heirs of the deceased, as well as, injured, then in these days of hardship, the financial assistance will be of great use to them. Therefore, instead of the sentences imposed, the Respondent is sentenced to ray a fine of Rs. 300/- (rupees three hundred only) u/s 70, in default to undergo rigorous imprisonment for 15 days, Rs. 5000/- (rupees five thousand only) u/s 72C(1)(a), in default to under go rigorous imprisonment for two months and to pay a fine of Rs. 500/- (rupees five hundred only) u/s 73 of the Act, in default to undergo rigorous imprisonment for 30 days. Out of the fines refused a sum of Rs. 3000/- (rupees three thousand only) shall be paid to the legal heirs of deceased Ananda Pradhan and a sum of Rs. 1000/- (rupees one thousand only) shall be paid to injured Hadu Sethi.

8. In the result, the appeal is allowed and the order of acquittal passed by the learned Sessions Judge is set aside. The order of conviction passed by the learned Judicial Magistrate, Khurda is restored and the sentences are modified to the extent stated above.