

(1986) 07 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 606, 948, 887, 1148, 1177, 1170, 1220 and 1191 of 1985 (R)

Waste Products Reclaimer Private Limited and another with 7 **APPELLANT**
Ors.

Vs

Coal Controller and Others with State of Bihar and Others **RESPONDENT**

Date of Decision : 21-07-1986

Acts Referred:

Citation : (1986) PLJR 263

Hon'ble Judges : S.S. Sandhawalia, C.J;S. Roy, J

Bench : Division Bench

Advocate : S.S. Sinha, P.D. Agarwal and M.M. Banerjee In all the Cases Except C.W.J.C. No. 1191 of 1985 R. M/s. P.K. Prasad and M. Sahu In C.W.J.C. No. 1191 of 1985/R, for the Appellant; S. K. Chattopadhyay . G. P. I. and Gopal Chowdhury, J. C. to G. P. I., for the Respondent

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—Learned Counsel for the parties agreed that all the seven writ petitions are verbatim Copies of statement of facts stated in C. W. J. C. No. 606 of 1985 (R). The questions of law involved in these petitions and pressed on behalf of the petitioners are similar. These applications, therefore, were heard together and are being disposed of by this judgment. All the petitioners (Companies Incorporated under the Indian Companies Act, partnership firm, and individuals) carry on business of manufacturing briquettes from slurry or sludge. The petitioners collect slurry or sludge from the surface of the land. Some of the petitioners have obtained right to collect slurry or sludge from the surface of the land by indentures executed by the State of Bihar and some of the petitioners purchase slurry or sludge from the settlees of the State of Bihar or from the raiyats. From the slurry or sludge, the petitioners manufacture briquettes which is sold in the market. According to the petitioners, slurry, sludge and briquettes are not coal within the meaning of definition of coal in the Bihar Trade Articles (Licenses Unification) Order, 1984 (the Unification Order). Consequently these

are not. essential commodities and neither Unification Order nor the Bihar Essential Articles (Display of Prices and Stock) Order, 1977 (the Display Order) has any application.

In the writ petitions, the petitioners have also contended that they are governed by the Colliery Control Order, 1945 and the Unification Order and Display Order shall have no application to them. So far the Colliery Control Order is concerned, it applies to colliery which includes plants for manufacturing coke. Since the specific case of the petitioners is that they manufacture briquettes, it can straight way be held that Colliery Control Order has no application so far slurry or manufacture of briquettes are concerned.

2. The question that requires to be decided is whether slurry, sludge or briquettes is coal within the definition of coal as given in Unification Order. Coal in Unification Order means "coal, coke and other derivatives and includes soft coke, hard coke of various grades".

3. There is no dispute between the parties that slurry is creation of industrial affluent consisting of mud, ash, oily substances, water, and carbonaceous ingredients. In the definition of coal in the Unification Order not only coal and coke but also other derivatives of coal are also coal within the meaning of the Unification Order. With reference to that definition it was urged by the learned Government Pleader No. I that as slurry is derived from coal, it comes within the mischief of the Unification Order and Display Order. According to Mr. Sinha, Learned Counsel for the petitioners, although slurry is obtained after washing of coal, it cannot be said to be a derivative of coal. The short question, therefore, is whether slurry can be held to be a derivative of coal. The word "derivative" has not been defined in the Unification Order. "Derivative" according to Black's Law Dictionary means "coming from another; taken from something preceding; secondary; that which has not its origin in itself, but owes its existence to something foregoing; anything obtained or deduced from another". Therefore, if it is held that slurry is obtained from coal then only it can be said that it is derivative of coal and shall be coal within the meaning of the definition of the Unification Order.

4. A Full Bench of this Court in C.W.J.C. No. 1530 of 1983(R) and analogous case (disposed of on 28th December, 1985) dealt in detail the process by which slurry is formed. It is, therefore, not necessary to go into those details for the purpose of these cases and it will suffice to notice relevant paragraphs of that judgment. While noticing how slurry is created, the Full Bench held in paragraph 6;

Inevitably what first calls for pointed notice is the larger process which leads to the creation of the industrial effluent of slurry. This may be noticed in non-technical language from the virtually admitted pleadings of the parties. In the coal washery the raw coal mined from the colliery is first brought and broken into graded pieces and thereafter undergoes a wide variety of processes with the principal object of reducing its ash content to the minimum. In the West Bokaro

Coal Washery this chemical process, on the petitioners' own showing, is what is called the "froth floatation process". This, inter alia, involves that the graded coal is mixed with the diesel oil, pine oil and many other chemical ingredients and is thereafter washed with lacs of gallon? of water. The end product is the washed coal with minimal reduced quantity of ash content fit for high graded metallurgical process including the manufacture of steel.

Then in paragraph 7 it held that :

The residual waste of the aforesaid process constituted of water, mud, oily and chemical substances, fine particles of coal and carbonaceous materials, which is commonly called slurry, is then put into a series of slurry pumps within the colliery premises. Nevertheless the surplus waste in the form of sludge/slurry is thereafter discharged as an effluent from the washery into the Bokaro river. Depending upon the weather conditions and where the river is not in high flood or otherwise this slurry would get deposited in the dry bed of the river or is then carried down on to the land of raiyati owners down stream, when the sludge or slurry comes into contact with the sand or soil. The water content or other material gets soaked and absorbed in the same, leaving on the top a fine carbonaceous product or film on the soil.

In these cases, the parties did not contend that coal is washed by a process other than that noticed by the Full Bench. They also did not dispute that the end product is washed coal and the residual waste is called slurry.

5. It will thus appear that the industrial effluent which comes out of coal washery during the process of washing of coal consisting of water, mud, oily and chemical substances, fine particles of coal and carbonaceous materials is commonly called slurry. But this is not collected for the purpose of converting into briquettes. What is collected has also been stated in paragraph 7 of the judgment quoted above, and that is the fine carbonaceous product or film on the soil which remains after water contents and/or other materials get soaked and absorbed in the land or dry bed of river.

Relevant portion of paragraph 11 of the judgment can also be gainfully quoted :

In order to truly appreciate the rival arguments, it is necessary to focus on the true nature and the essence of the product commonly known as slurry. As a matter of history, it is not in dispute that in the earlier decades slurry had been allowed to go waste and was a pollutant which had to be painstakingly thrown in the rivers or stream in order to be washed away. It is common ground that some of the old coal washeries go back to the forties and fifties (indeed, it is the petitioners' claim that one of the coal washeries in the present case is the oldest in the country) when slurry had no commercial value and was a mere polluting waste or a reject material. Undoubtedly, inflation and abnormal rise in the prices of coal and fuel have rendered slurry deposit to be of substantial commercial value, for which rival claims are now being raised. This by itself, however, cannot alter the basic nature of slurry as an industrial effluent or an industrial waste.

It, thus, seems plain that the true nature of slurry is that it is a residue, reject or waste of an industrial process consisting of mud, ash, oily substances, water and carbonaceous ingredients.

That being the position, it will be absurd to hold that slurry is a derivative of coal. As slurry is not coal or derivative of coal, it is not covered by the definition of coal under the Unification Order. Slurry has also not been enumerated as a trade article in Schedule I of the Unification Order. It must, therefore, be held that Unification Order does not apply to slurry.

6. Coal has not been defined in Display Order. But in Schedule 1 to that Order, trade article mentioned is "coal including soft coke". Surely slurry is not coal nor it is soft coke. Display Order, therefore, shall also have no application to the business in slurry.

7. The validity of the Unification Order and the Display Order was also challenged by the petitioners on the ground that the State Government was not competent to pass the Orders. In the circumstances of these cases and the findings recorded above, that question need not be gone into. In the result, all the writ petitions are allowed. Let a writ of prohibition be issued prohibiting the respondents, their men, agents, servants, officers and subordinates from applying the provisions of the Unification Order and Display Order, so far the business of the petitioners in slurry is concerned. There shall be no order as to costs.

S. S. Sandhawalia C.J.

I agree.