

(2001) 03 SC CK 0099

In the Supreme Court Of India

Case No : Civil Appeal No: 4964 of 1999

Workmen represented by Akhil Bhartiya Koyla Kamgar Union **APPELLANT**

Vs

Employers in relation to the Management of Industry Colliery **RESPONDENT**
of M/s. Bharat Coking Coal Ltd. and Others

Date of Decision : 21-03-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FF, 25H
Coking Coal Mines (Nationalisation) Act, 1972 — Section 8, 9, 9(1), 9(2), 17, 23

Citation : AIR 2001 SC 1994 : (2001) AIRSCW 1397 : (2001) 49 BLJR 1350 :
(2001) 89 FLR 552 : (2001) 4 JT 327 : (2001) LabIC 1397 : (2001) 1 LLJ 1400 :
(2001) 2 SCALE 626 : (2001) 4 SCC 55 : (2001) SCC(L&S) 641 : (2001) 2 SCR
553 : (2001) 2 SCT 371 : (2001) 2 Supreme

Hon'ble Judges : S. Rajendra Babu, J;S. N. Variava, J

Bench : Division Bench

Advocate : Gobind Dass, S.B. Upadhyay, D.K. Verma, Ms. Mrinalini Padhi and
Tathagat H. Vardhani, for the Appellant; Ajit Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Babu, J.—The management of the Bhugatdih Rise Area Colliery was taken over by the Central Government under the Coking Mines (Emergency Provisions) Act, 1971 which came into effect on October 17, 1971. Subsequently, the Colliery stood nationalised with effect from May 1, 1972 under the provisions of the Coking Coal Mines (Nationalisation) Act, 1972 (for short 'the Nationalisation Act'). 111 workmen who were working in these collieries were laid off by the management in 1971 and subsequently retrenched from service. Some of the workers of the Bhugatdih Colliery were taken back in employment though they were purely temporary workmen on daily basis. The Union of the workmen demanded employment of these 111 workers but the respondents did not employ them. Thereafter, a dispute whether the action of the management of Industrial Colliery of Messrs Bharat Coking Coal Limited in refusing employment to 111 workmen listed in the Annexure below was justified and, if not, to what

relief are the said workmen entitled, was referred to the Industrial Tribunal.

2. The claim of the workmen before the Tribunal is that they are permanent workers and though they had been retrenched, they are entitled to preference in the matter of employment u/s 25H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). The respondents took the stand that Bharat Coking Coal Limited is neither the employer of the workmen within the meaning of Section 25H of the Act nor is it successor-in-interest of the colliery in question. The 111 workmen were retrenched on June 9, 1971 long before the Coking Mines (Emergency Provisions) Act, 1971 came into effect on October 17, 1971. Inasmuch as the 111 workmen were retrenched on June 9, 1971, they were neither in employment on the appointed day, that is, May 1, 1972, nor their retrenchment was set aside by any court or tribunal. It is contended that u/s 9 of the Nationalisation Act, the Central Government shall not be liable for any liability of the owner, agent, manager or managing director of a coking coal mine in relation to any period prior to May 1, 1972 and such liability will be that of the previous owner. The respondents contended that a person who does not acquire both the assets and liabilities cannot be a successor-in-interest and, therefore, reference should be rejected.

3. The Tribunal held that the erstwhile management of the Bharat Colliery retrenched as many as 150 or more workmen for operational and financial problems and, therefore, there was a statutory obligation on the owner flowing from Section 25H of the Act to re-employ the retrenched workmen if it proposes to take in its employment any person as envisaged in that Section. The Tribunal, therefore, gave a direction that the refusal to employ the 111 workmen in question is not justified and on establishing the identity of the workmen as indicated in the course of the award, their cases will be considered for employment as and when any recruitment is done. The matter was carried to the High Court by way of a writ petition. After examining the provisions of Sections 9 and 17 of the Nationalisation Act, the High Court held that the workmen in question cannot claim any benefit u/s 17 as they were neither in employment on the appointed day, that is, May 1, 1972, nor their retrenchment was set aside by any court or tribunal; that thus they were neither workmen of the respondent nor are entitled to be deemed to its workmen. The High Court next considered whether the respondent is a successor-in-interest of the Colliery and on examination of Section 9 of the Nationalisation Act, took the view that the Government or the respondent cannot be considered to be successor-in-interest of the old business inasmuch as only the right, title and interest of the coking coal mines have been acquired by the Government under the Nationalisation Act free from all encumbrances; that it is neither the liability of the owners of the said mines nor goodwill thereof has been acquired; that as long as both assets and liabilities have not been acquired, it cannot be stated to be a successor-in-interest in question unless statute provides for the same; that there is no contract between the Government and the owners providing otherwise and that, therefore, there is no obligation on the respondents to give effect to Section 25H

of the Act. On reaching these conclusions, the writ petition was allowed and the award of the Tribunal is quashed. Hence this appeal by special leave.

4. The arguments addressed before the Tribunal and the High Court are reiterated before us.

5. In *The Workmen Vs. The Bharat Coking Coal Ltd. and Others*, this Court had occasion to consider the effect of the provisions of Sections 9 and 17 of the Nationalisation Act. Considering the definition of 'workmen' in the Act, Section 17 [as was in force then] is interpreted. It is held that Section 17 is a special provision relating to workmen and their continuance in service notwithstanding the transfer from private ownership to the Central Government or the Government company, which was statutory protection and even a person who has been dismissed or whose dismissal led to a dispute is also a 'workman' for the purpose of these provisions. Though they may not be physically on the rolls on the appointed day of the take over, it cannot be contended that they were not legally workmen under the new owner. The statutory continuity of service will have to be taken note of and on that basis this Court proceeded to hold that a dismissed workman also is a 'workman' under the Government company. While interpreting Section 9 of the Nationalisation Act it was stated that the liability of the owner prior to the appointed day shall not be enforceable against the Central Government or the Government company but only against the previous owner. It was stated in very emphatic terms that "employees are not a liability as yet in our country". Section 9 deals with pecuniary and other contractual liabilities and has nothing to do with workmen. If at all it has anything to do with workmen, it is regarding arrears of wages and other contractual, statutory or tortious liabilities. Section 9(2) operates only in the area of Section 9(1) and that is why provision is being made for removal of certain doubts and the whole provision confers immunity against liability not a right to jettison workmen under the employment of the previous owner in the eye of law.

6. Bearing these principles in mind if we examine the scope of the Nationalisation Act, we may notice that in respect of properties that vested in the Central Government, as provided under Sections 8 and 9, the Nationalisation Act provides immunity to the Central Government or its company from prior liabilities. Chapter III of the Nationalisation Act provides for payment of amount under that Chapter. Chapter VI provides for appointment of Commissioner of Payments who has an obligation to deal with the claims made u/s 23 of the said Act to persons who makes a claim before the Commissioner within 30 days from the specified date. On examination of the provisions thereof, we may relate all those items that have been mentioned in Section 9 to Section 23 of the Nationalisation Act. They all pertain to pecuniary or commercial obligations and not to other matters. The claim made in the present case is one relating to employment u/s 25H of the Act which merely creates an obligation that a retrenched workman will have preference when fresh appointments are made and an opportunity will have to be given to them to offer themselves for re-

employment. Such an obligation does not fall within the scope of Section 9 of the Nationalisation Act.

7. Shri Ajit Kumar Sinha, the learned counsel for the respondents, relying upon the decision of this Court in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, , contended that the respondents are not successor-in-interest and, therefore, have no obligation to give effect to Section 25H of the Act in respect of workmen in question; that since both rights and obligations have not been taken over by the respondents and only certain properties have been vested in the respondent-Company without any obligation in terms of Sections 8 and 9 of the Nationalisation Act, the contention of the appellant for re-employment has to be rejected.

8. We have already adverted to the decision of this Court in *The Workmen v. The Bharat Coking Coal Ltd. & Ors.* (supra) which examines the scope of Section 9 of the Nationalisation Act and the liability contemplated therein. It is necessary to understand the obligation of employer as such contemplated in Section 25H of the Act as stated in clear terms by this Court in that decision. Unlike civil law, industrial law takes a different view with regard to as to who is the successor who runs the said industry subsequently. Where there is transfer of business from one owner to another, the rights and obligations which existed between the old management and their workers continue to exist vis-a-vis the new management after the date of the transfer provided there is continuity of service and identity of business. For purposes of continuity of service Section 17 makes the necessary provisions. Thus a person on such transfer becomes the owner of the concern and the employer of the employees of the establishment, and as long as there is identity of business itself and retains its identity, it must be held that the respondent is also a successor-in-interest to that extent. This Court in *Anakapalle Co-operative Agricultural and Industrial Society Ltd.* (supra) took this view after considering several relevant factors into consideration.

9. Shri Sinha submitted that as soon as transfer has been effected u/s 25FF of the Act all the employees became entitled to claim compensation and thus who had been paid such compensation will not be entitled to claim re-employment u/s 25H of the Act as the same would result in double benefit in the form of payment of compensation and immediate re-employment and, therefore, fair justice means that such workmen will not be entitled to such conferment of double benefit. It is no doubt true that this argument sounds good, but there has been no retrenchment as contemplated u/s 25FF of the Act in the present case. The workmen in question have been retrenched long before the colliery was taken over by the respondents and, therefore, the principles stated in *Anakapalle Co-operative Agricultural and Industrial Society Ltd.* (supra) in this regard cannot be applied at all. The workmen had been paid compensation only u/s 25F and not u/s 25FF of the Act on transfer of the colliery to the present management. That case has not been pleaded or established. Hence, we do not think that the line upon which the High Court has proceeded is correct. The order made by the High

Court deserves to be set aside and the award made by the Tribunal will have to be restored.

10. The appeal shall stand allowed accordingly. However, in the circumstances of the case, there shall be no order as to costs.