Bharat Coking Coal Limited Vs M/s South Tisra Colliery Co.(P) Ltd. and Others

Court: Jharkhand High Court

Date of Decision: July 13, 2012

Acts Referred: Coking Coal Mines (Nationalisation) Act, 1972 â€" Section 19, 19(8), 22, 22(6), 25 Evidence Act, 1872 â€" Section 4

Citation: (2012) 2 EFLT 719

Hon'ble Judges: Prakash Tatia, J; Jaya Roy, J

Bench: Division Bench

Advocate: Ananda Sen and Ranjan Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the appellant. It will be appropriate to mention here that the appellant filed a Claim petition, being Claim Petition No.

9247 of 1972 before the Commissioner of Payments u/s 25 of the Coking Coal Mines (Nationalisation) Act, 1972, in which, the petitioner raised

a claim of Rs. 2,86,282.22.

2. The petitioner''s claim was based on the audited statement of accounts and petitioner also submitted some supporting documents. The

petitioner''s contention is that in view of the decision the Government notified on 17.10.1971 the management of South Tisra Colliery Co.(P) Ltd

vested in it from 17th October, 1971. This vesting of management was followed by nationalisation of the coal mines by notification dated 1st May,

1972. During this period i.e., 17th October, 1971 to 30th April, 1972, the Central Government had to put some money for the purpose of

managing of the Coking Coal Mines and, therefore, a provision was made in the Coking Coal Mines (Nationalisation) Act, 1972, by inserting

Section 25, providing that every amount advanced by the Central Government or by the custodians for the management of Coking Coal Mines

shall be recovered from the income derived from such Coking Coal Mines or Coke Oven Plants in respect of the period during which the

management of such mines or plants has been remained vested with the Central Government. This Section 25 was substituted by the Act of 1986

by virtue of Section 19 and it has been provided in substituted Section, which was made effective retrospectively from 1st May, 1973 that any

amount in excess of the payment over receipts in the statement of accounts prepared u/s 22 shall be deemed to be an amount advanced by the

Central Government or the custodian, for the management of the Coking Coal Mines or Coke Oven Plants during the period, in which, the

management of such mines or plants remained vested in the Central Government and the Central Government may make a claim to the

Commissioner for such excess payment and such claim shall have priority over the claims of all other unsecured creditors of the coking coal mines

or coke oven plant.

3. This claim of the petitioner was contested by the respondents, the erstwhile coal company, on the basis of legal as well as on the question of fact

and also by questioning the correctness of the audited account. The learned Commissioner of Payments vide order dated 28th September, 1979

rejected the claim of the petitioner on various grounds including on the ground that the petitioner failed to prove the amount which petitioner

claimed in its Claim Petition.

4. The order passed by the Commissioner of Payments dated 29th September, 1979, under Coking Coal Mines (Nationalisation) Act, 1972 was

challenged by preferring appeal before the Court of 1st Additional District Judge, Dhanbad in Appeal No. 5 of 1979. The learned 1st Additional

District Judge, Dhanbad, after enterpreting Section 25 of the Act of 1972 observed that the intention of the legislature was very clear as is

apparent from Section 25 of the Act, that the amount to be claimed should be, for the purpose of management and should be advanced only during

the management period and it does not stand to the test of reason and any common sense that an expenditure can be made for management

purpose after the period of management had ended and thereafter, held that any payment made after the colliery was completely nationalized on

1.5.1972, the payment cannot be held to be the payment made for management purpose, obviously for the out going company. Therefore, such

amount cannot be claimed u/s 25 of the Act. The learned Appellate Court also considered each and every entry of the audited account in detail

and found several discrepancies in those entries and upon finding such discrepancies ventured to look into the supporting documents and found that

the petitioner failed to produce relevant books of accounts and documents and some of the documents are illegible, therefore, account could not

be verified. On this count also, the Appellate Court rejected the claim of the petitioner.

5. Being aggrieved against the order passed by the Appellate Authority dated 30.05.1989, the petitioner preferred writ petition, being C.W.J.C.

No. 1694 of 1989. The petitioner''s writ petition was dismissed vide order dated 9.1.1998 on the basis of statement given by both the parties that

the controversy involved in the writ petition is squarely covered by decision of this Court delivered in the case of Purushottampur Colliery Pvt. Ltd.

Vs. Union of India & Ors reported in 1997 (2) PLJR 816. The learned Single Judge, in view of the submission of the parties, dismissed the writ

petition of the writ petitioner. The petitioner then submitted a review petition, being Civil Review No. 22 of 1998(R) before the learned Single

Judge, which was also dismissed by order dated 30.04.2001. Not satisfied with above two orders, the petitioner preferred Letters Patent Appeal,

which was dismissed by the Division Bench of this Court on 9.07.2001 merely by saying that Court does not find any merit in this appeal. The

petitioner then approached the Hon''ble Supreme Court by preferring Special Leave to Appeal, which was converted into Civil Appeal No. 359 of

2003. The Hon''ble Supreme Court allowed the said Civil Appeal and set aside the order of the Division Bench as it was not a reasoned order.

Hence, this matter has again come up before this Court.

6. Learned counsel for the appellant submitted that it was a mistake of law committed by the petitioner''s counsels in admitting that the issues raised

in the writ petition have already been answered in the judgment of this Court delivered in the case of Purushottampur Colliery Pvt. Ltd. (Supra),

whereas, in that case only one issue which was common to this petition was there and that was the issue that, whether the audited statement of

accounts prepared u/s 22 of the Act shall be deemed to be a conclusive proof of the debt of the other parties and that has been answered in

Purushottampur Colliery case. It is also submitted that, in that case, the Court committed mistake in enterpreting the law as Sub-clause (b) of

Section 19 of the Coal Mines Nationalisation Laws (Amendment) Act, 1986 was not brought to the notice of the learned Single Judge. It is

submitted that Sub-section (b) of Section 19 clearly provided that every statement of accounts or supplementary statement of accounts prepared

by the Central Government or the Government Company u/s 22 of the Coking Coal Act or Section 19 of the Coal Mines (Nationalisation) Act

shall be deemed to have been validly prepared as if provisions of Section 22 of the Coking Coal Act or as the case may be, Section 19 of the

Coal Mines Act as amended by this Act, had been in force at all material times, and no such statement of accounts or supplementary statement of

accounts shall be called in question in any Court on the ground that it had not been prepared in normal commercial practice or that any item has or

has not been included in such statement of accounts. Therefore, according to learned counsel for the petitioner, the authorities below committed

serious error in rejecting the claim of the writ petitioner.

7. We considered the submissions of learned counsel for the appellant and perused the relevant provisions of law of the Act of 1972 and

substitution of Act No. 57 of 1986 and also Section 19 of the Coal Mines Nationalisation Laws (Amendment) Act, 1986 i.e., Act No. 57 of

1986.

8. It is true that in the Purushottampur Colliery Pvt. Ltd. case (Supra), there was only one point and that was with respect to the issue that, whether

the statement of accounts prepared u/s 22 itself can be the basis for passing any order of liability against the respondents and the respondents have

no right to rebut the correctness of the statements of accounts which are audited and maintained in view of Section 22 of the Act of 1972. Learned

Single Judge in above case, held that the liability cannot be fastened only on the basis of audited statement of accounts and obviously the contesting

parties has right to prove otherwise.

9. A bare perusal of Section 19(8) of the Act of 1972, which is relevant for our purpose, clearly provides that:-

(8.) Statement of accounts audited under sub-section (6) shall, unless the contrary is proved, be conclusive proof in respect of every matter

entered therein.

Explanation-- For the purposes of this section, ""statement of accounts"" means a statement in the form of receipts and payments, and does not

include any statement that may be prepared as a result of the closing and balancing of the books for the preparation of the profit and loss account

and balance-sheet or any statement prepared in accordance with the normal commercial practice.

10. Therefore, it is clear from sub-section (8) that statement of accounts audited under sub-section (6) of Section 22 of the Act of 1972 are

conclusive proof subject to right to the other party to prove contrary to such account of the claimant and burden is upon the person challenging the

correctness of the statement of accounts maintained under sub-section (6) of Section 22. So, in this fact situation, once a statement of accounts

audited u/s 22(6) is produced then automatic presumption is in favour of such person who is relying upon such statement of accounts and burden

automatically shift upon other party. This burden is heavy upon other party as the party is required to prove contrary to the statement of accounts

which were audited and have been produced before the Court, therefore, this conclusive proof is not a conclusive proof to that extent as has been

declared u/s 4 of the Evidence Act, 1972 which provision has mandatorily prohibited the Court from allowing any evidence against such conclusive

proof. Contrary to Section 4 of Evidence Act, Section 22(8) of the Act of 1872 has specifically given a liberty to other party to dis-proof the

audited statement of books of accounts and the entries made therein.

11. If we look into the reasons given in the original order dated 28.09.1979, then we can find that for the most of the entires the correctness was

question by the respondents and those entires were found to be incorrect by the Commissioner of Payments under the Act of 1872. The

Commissioner of Payments tried to find out some support to the audited statement of account from other documents which were produced by the

petitioner itself obviously to substantiate his claim and to justify the entires made in the books of accounts and after considering those documents

also the Commissioner of Payments reached to the conclusion that these documents substantially are not supporting the entries and some of the

documents are illegible. In spite of making all efforts, the Commissioner of Payments could not reconcile the statement of accounts produced by

the petitioner though were audited but their entires were not found to be correct. The burden upon the contesting party was only to the extent that

he has to prove contrary to the entires made and entered in the statement of accounts, which he could do before the Court below. The appellate

Court also after considering these relevant facts held that, the statement of accounts produced by the appellant cannot be relied upon, therefore,

there is concurrent finding of fact with respect to the correctness of the statement of accounts alleged to have been duly audited.

12. There appears to be complete application of mind to the facts of the case which finds support from the ultimate order passed by the learned

1st Additional District Judge, Dhanbad and appellate order dated 30.05.1989, who allowed the appeal of the writ petitioner to the extent of Rs.

23,829/-. Therefore, in spite of rejecting the entire claim of the writ petitioner which was based only on the statement of accounts alleged to have

been audited and have been maintained u/s 22(6) of the Act of 1972, yet limited relief has been granted to the writ petitioner. In view of the above

reasons, we do not find any merit in the L.P.A and we do not find any reason to set aside the order of the learned Single Judge in such a old matter

of 1972 as it originated in the year 1972 and, therefore, we decided the matter on merit.

This L.P.A is accordingly, dismissed.