

(2002) 12 JH CK 0009

Jharkhand High Court

Case No: M.A. No. 82 of 2002

Dr. Jai Prakash Narain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Dec. 10, 2002

Acts Referred:

- Coal Mines (Nationalisation) Act, 1973 - Section 23(7)

Citation: (2003) 1 JCR 271

Hon'ble Judges: Vinod Kumar Gupta, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: B.K. Dubey, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal has been filed purportedly under Sub-section (7) of Section 23 of the Coal Mines (Nationalization) Act, 1973. Sub-section (7) of Section 23 reads as under :--

"(7) A claimant or owner who is dissatisfied with the decision of the Commissioner may prefer an appeal, within a period of sixty days from the date of the decision to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the coal mine is situated :

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court for the State in which the coal mine is situated, and such appeal shall be heard and disposed of by not less than two Judges of that High Court :

Provided further that any appeal which has not been preferred before the date on which the Coal Mines Nationalization Laws (Amendment) Act, 1978, receives the assent of the President, shall be preferred, within a period of sixty days from such

date,"

2. In the supplementary affidavit filed by the appellant, it has been stated that Sri D.D. Sahay, Commissioner who passed the impugned order was a Judge of the Calcutta High Court and, therefore, the appeal in terms of proviso of Sub-section (7) of Section 23 (supra) lies in the High Court of Jharkhand.

3. What is noteworthy to observe is that the proviso to Sub- section (7) used the expression "where a person who is a Judge of a High Court is appointed to be the Commissioner". It is therefore, clearly in-contra distinction to the stipulation which might be by way of an expression "where a person who has been a Judge of a High Court". The legislative intent is very clear. It is that if the Commissioner appointed under the Act is a. Judge of a High Court, the appeal lies before a Division Bench of the High Court. But if the appointed Commissioner "has been" a Judge of a High Court, the appeal would lie before the principal Civil Court of original jurisdiction, namely, the District Judge of the District concerned in whose jurisdiction the coal mine is situated.

4. The appeal on the aforesaid ground is held to be not maintainable in this Court and is accordingly, dismissed only on the ground of lack of jurisdiction. No order as to costs.

5. However, the appellant is permitted to prefer an appeal before the District Court. If in the mean while, the appeal has become time barred, it shall be open to the appellant to seek condonation of delay and the filing of this appeal and its pendency in this Court would be a good enough ground warranting condonation of delay.