

## Laxmi Narayan Singh Vs Bharat Coking Coal Ltd. and Others

**Court:** Jharkhand High Court

**Date of Decision:** April 10, 2008

**Citation:** (2008) 2 JCR 514

**Hon'ble Judges:** R.K. Merathia, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

In this writ petition, the dispute is with regard to age/date of birth of the petitioner.

2. Mrs. M.M. Pal, learned Counsel appearing for the petitioner, submitted that the Age Determination Committee (for short ""the Committee"")

determined the petitioner's age as 38 years on 22.8.1986, according to which, his date of birth comes to 22.8.1948 and the same was mentioned

in his service excerpt as well as in the Identity Card also. But petitioner has been superannuated with effect from 31.8.2006 before completing 60

years. She lastly submitted that, in any event, the respondents be directed to get the petitioner's age determined by constituting a fresh Medical

Board.

3. Mr. Anoop Kumar Mehta, learned Counsel appearing for the respondents, on the other hand submitted that the petitioner's age was recorded

in the statutory Form ""B"" register as 28 years as declared and signed by him; and accepted by the Management, on the date of his appointment i.e.

on 30.1.1973, according to which, his date of birth comes to 30.1.1946. (However, in the service records, it came as 30.8.1946). He further

submitted that therefore if he was referred to the Committee, it was wholly improper, as there was no occasion for the same. Further referring to

the petitioner's representation dated 21.1.2005 (Annexure 3), he also submitted that the greed of the petitioner did not stop there and he went to

the extent of claiming that his date of birth was 21.3.1955. He further submitted that the petitioner's age/date of birth as recorded in the statutory

Form ""B"" register is binding on the petitioner. He relied on a judgment of this Court in Taraknath Upadhyay Vs. Bharat Coking Coal Ltd. and

Others, and submitted that it was affirmed in L.P.A. and then by Supreme Court vide S.L.A (Civil) No. 13755 of 2006 by order dated

29.11.2007.

4. It appears that a copy of the purported letter dated 22.9.1986 with it's enclosed list of age assessment (Annexure 5) was not supplied to the

counsel for the respondents. Accordingly, in paragraph 20 of the counter affidavit, the respondents stated that the genuineness and correctness of

such letter can be verified only after a copy of the same is supplied. After a copy of the said letter was supplied, a supplementary counter affidavit

on behalf of the respondents was filed stating therein that the said letter alongwith the enclosed list was neither available in Katras Area Office nor

in the different Units of Katras Area, to which the said letter is said to have been addressed and sent. Thus the respondents have doubted and

disputed the genuineness of the said letter dated 22.9.1986 relied by the petitioner.

It may further be noted that the petitioner has not disputed Annexure A, which is a copy of the statutory Form ""B"" register, rather he has admitted

in paragraph 5 of his affidavit filed on 10.8.2006 that the said Form ""B"" register (Annexure A) was prepared in the year 1973, at the time of his

appointment in West Moonidih Colliery, ""but when he was transferred to Angar Pathra Colliery in 1984-1985, due to the discrepancy/dispute

regarding the date of birth, he was referred to the Medical Board held in 1986 and, accordingly, Form ""B"" register was opened in Angar Pathra

Colliery wherein his date of birth was recorded as 38 years as on 28.8.1986"".

It further appears that the Committee was constituted ""to assess the age of those workers whose age records were not available in any records like

Form ""B"" and/or CMPF""-vide letter dated 18.6.1986 (Annexure 6) (emphasis supplied). Though the genuineness of the said age assessment

dated 2.8.1986 (Annexure 5) has been disputed by the respondents, but even if it is accepted that the petitioners age was assessed by the

Committee in 1986, he cannot rely on the same in view of the fact that admittedly his age was already recorded in Form ""B"" register prepared at

the time of his appointment on 30.1.1973 (Annexure A). Only because he was transferred to other colliery in 1986, his age was not required to be

re-determined, and he cannot take advantage of the age, which came to be mentioned in his service excerpt, identity card etc., on the basis of the

purported age determined by the Committee.

5. Thus it is clear that the age declared by the petitioner at the time of his appointment on 31.1.1973 was accepted and recorded by the

management in Statutory Form ""B"" register which he acknowledged by putting his signature. Thus he fully knew what was his age recorded in

Form "B" register. If after his transfer to another colliery, his case was sent to the Committee, it was either due to ignorance or suppression of the

fact that his name was already recorded in Statutory Form "B" Register.

6. Even Instruction 76, relied by the petitioner, says that unless "there is a very glaring and apparent wrong entry" the cases of date of birth will not

be reopened. Paragraphs 22 and 23 of the judgment of Taraknath Upahyay (supra) support the case of the respondents, which reads as follows:

22. For the aforementioned and foregoing reasons, this Court has no hesitation, therefore, in holding that the act of referring the case of the

petitioner to the Medical Board was not only irregular, but it was contrary to the Implementation Instruction No. 76 as the said reference did not

meet with the essential pre-requisite contained in Clause (B)(ii) thereof.

23. Consequently, the arguments to the effect that the respondents once having corrected the date of birth on the basis of the findings given by the

Medical Board are estopped from acting contrary thereto cannot be accepted because it is well settled that the State cannot be bound by

unauthorized acts of its employees and that the concept of promissory estoppel cannot be raised if the State or its servants act beyond the scope of

their duty or contrary to the directions or standing administrative instructions. This view was taken by the Full Bench of the Patna High Court in the

Case of Rita Mishra and Ors. v. Director of Primary Education reported in 1987 BBCJ 741 (FB).

7. The order of Jiwan Kishore Vs. Delhi Transport Corporation and Another, , relied by Mrs. Pal is not applicable in this case.

8. In the result, I find no merit in this writ petition, which is, accordingly, dismissed. However, no costs.