The West Ghusick Coal Co. Ltd. Vs The State of West Bengal

Court: Calcutta High Court

Date of Decision: Oct. 10, 1969

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: 76 CWN 1079

Hon'ble Judges: C.N. Laik, J

Bench: Single Bench

Judgement

C.N. Laik, J.
This is one more colliery case on a less complicated Act, but it involves questions of nicety. The imposition of cess on the

sale price of the water discharged from the coal mine, paid for its use by the neighbouring glass factory, has set the legal ball rolling. Shortly, the

facts are :

The petitioner, a coal company, is the owner of a colliery near Asansol in the District of Burdwan. As usual in coal mines, the percolated water

which accumulated in the petitioner''s colliery was pumped out and discharged at the surface, to prevent inundation of the same. For the year

1958-59, a sum of Rs. 42,073/- was received by the petitioner as the sale price of the water, so pumped out The profit and loss account of the

said year shows a sum of Rs. 5,82,000/- and odd as the sale price of the coal and the said sum of Rs. 42,072/- as miscellaneous income being

charges for water supply. For the first time, the petitioner claimed deduction of the sale proceeds of the water from the assessment unlike previous

years.

2. The Cess Deputy Collector, Burdwan assessed the petitioner in respect of the colliery with the Road and Public Works Cess under chapter V

of the Cess Act, 1880 (Bengal Act IX of 1880 hereinafter referred to as the Act). He called on the petitioner to pay the amount of cess on the said

amount of Rs. 42,000/- and odd, treating the same as one of the items making up the total annual net profits from the mine being ""admittedly

derived from the coal mine"". . . . ""in the proceeds of extracting coal and by use of the company''s instruments, equipments and stuffs"". He observed

that the petitioner in earlier years did not make such claim. The decision of the Cess Deputy Collector was not interfered with in the appeal by the

collector, Burdwan, as the assessment according to him, was not contrary to the provisions of the Cess Act and Rule 103 of the Rules and

because the income was received by the employment of the machinery and staff attached to the mine.

3. The petitioner''s revision petition failed before the Commissioner of Burdwan Division. He inter alia observed :

The water had to be pumped out of the mine, otherwise the mine would be drowned and the colliery, as such, would cease to work. Therefore,

every bit of machinery which took part in this action of pumping out and disposal of this water and every action taken for the means thereof were

not only absolutely necessary for the continuation of the working of the mine, but were actually a part and parcel of that vast conglomeration of the

various commitments, movements and actions taken for the removing of coal from beneath the surface of the earth for the ultimate profit of the

management. Therefore, this removing of water certainly came with in the scope of rule 103 which deals with the valuation of movable properties

under chapter V of the Act and certainly also came within the scope and ambit of sections 6 and 72 of the said Act.

His further observation in the next paragraph of the order is :

it is all very obvious and logical that if this water which is pumped out to save the colliery from drowning is then sold at a vast profit, it certainly

comes within the ambit of the term ""gross earnings"" and, as such, is liable to cess.

The suggestion of the lawyer appearing for the petitioner, appeared to the Commissioner as naive.

4. The member, Board of Revenue, also agreed, with the Commissioner and dismissed the application of the petitioner finding inter alia that the

water is one of the products obtained by the company in the working of the mine and forms a part of the profit of the mine.

5. The assessee''s instant application under the provision of Article 227 of the Constitution, is directed against the said order.

6. The material provisions of the Cess Act which require mention are Ss. 6 and 72 and Rule 103 of the Rules framed under the Act. The material

portion of S. 6 which is relevant for the purpose of this case is as follows : ""6. The road cess and the public works cess shall be assessed on the

annual value of lands and ''until provision to the contrary is made by Parliament'' on the annual net profits from mines, quarries, tramways, railways

and other immovable property, ascertained respectively as in this Act prescribed.

The said S. 6 was amended in the year 1964 by S. 3 of West Bengal Act XXIII of 1964. The relevant amendment is as follows :

(1) for the words beginning with ""shall be assessed on the annual value of lands"" and ending with ''ascertained respectively as in this Act

prescribed", the following shall be substituted, namely :

shall be assessed--

(a) in respect of lands, on the annual value thereof,

(b) in respect of coal mines, on the annual despatches therefrom, and

(c) in respect of mines other than coal mines, quarries, tramways, railways and other immovable property, on the annual net profits thereof,

ascertained respectively as in this Act prescribed.

7. S. 72 which starts with chapter V of the Act reads as follows:

On the commencement of this Act in any district, and thereafter before the close of each year, the collector of the district shall cause a notice to be

served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway, and other immovable property not included

within the provisions of chapter II, such notice shall be in the form in schedule E contained and shall require such owner, chief agent, manager or

occupier to lodge in the office of such collector within two months a return of the next annual profits of such property, calculated on the average of

the annual net profits thereof for the last three years for which accounts have been made up.

Such collector may in his discretion extend the time allowed for lodging such return.

This section was also amended in the year 1964 and consequential amendments in the case of coal mines by putting in the words "annual

despatches" in place of the expression "net annual profits" were carried out.

8. Rule 103 of the Rules lays down as follows :

It is important that no immovable property that is liable to assessment under chapter V of the Act should be excluded, unless, it has been duly

exempted u/s 2 of the Act. In addition to mines, quarries, tramways and railways, it should be pointed out that forest produce, timber, fuel, profits

from the sale of trees or from the removal of sand, stones, etc., are assessable under this chapter. These sources of valuation have not been dealt

with in any district and it is now necessary that valuations should be taken in hand. It is important to note, however, that property valued under

chapter II is not liable to further valuation under chapter V.

9. It should be borne in mind that chapter II of the Act deals with valuation of lands; and chapter V deals with valuation, assessment and levy of

cess on mines, railways and immovable property.

10. Mr. Hari Prasanna Mukherjee, the learned Advocate appearing on behalf of the petitioner company contended that the amount received by

the petitioner for sale of the water, pumped out from the coal mine, was not, on the construction of the Act and the Rules and particularly the

aforesaid provisions, liable to be assessed with any amount of cess. Sale price cannot be included in the term ''annual net profits from mines''

appearing in Ss. 6 and 72 of the Act. Reliance was also made on the said Rules 103 in support of the said contention.

11. The learned Government pleader appearing on behalf of the opposite party adopted the reasonings of the tribunals below. According to him

the sale of the water pumped out of the mine is a profit from the mine. It was argued that the water pumped out of a mine is a mineral and the sale

price of such commodity should form part of the annual net profits from the mine, though might be in a secondary sense The subsidiary argument

was advanced that water is a part of the land and hence the sale price of the water is assessable under the Act.

12. As great stress has been paid at the bar that the water is a mineral I discuss very briefly the concept of a mineral. The variety of meanings

which the use of the word ''mineral'' admits of being itself the source of all the difficulty in the attempt to frame any general definition. I do not blame

Mr. Chakraborty, as no definition of mineral is attainable. What is and what is not included in the term ''mineral'' has been the subject of very many

litigations. It is also true that mines and minerals are not definite terms and they are susceptible of limitations or expansions according to the

intention with which they are used but there are useful yardsticks by which it can be measured. Minerals, have been given a number of differing

secondly meanings. It is chefly a question of fact but to my mind, never has it included water within it. There are however certain conceptions

which are basic and should not be lost sight of. Mineral is a comprehensive term including every description of stone and rock deposits and is

connected with excavation but the meaning of the word ''mineral'' has never been so extended as to include anything more than what is the product

of the earth. The real test of mineral seems to be the character of the deposit. Water within the mine is unable to pass this test. It is well known that

the frequent sense of the mineral rather a more restricted signification of the terms requires the substance to be matalliferous.

Mineral primarily is the thing which grows in a mine, the contents and produce of mine. The produce of mine is not necessarily limited to produce in

its native state. Coke may be such a produce although by combustion, its chemical nature is changed. In my opinion, the produce of mine cannot

bring water within its category, though the learned Government pleader was at pains to emphasise that the catalogue of minerals is never closed. In

some cases again the word ''mine'' has been given a meaning so as to include space created, as the mineral is worked out and the space left when

the mineral has beer worked out, but nowhere has it included water.

13. It appears from a review of English cases that various substances are recognised as minerals in the etymological sense of the word and also by

the standard authorities on the subject, according to their chemical compositions and physical properties. The history of the decisions and dicta of

the American Courts as to the meaning of the word ''mineral'' are though in some cases curious, he has as yet suggested that the underground

water within a mine or air, is a mineral in the sense thought of by the framers of the Mines Act or the Ceas Act and the Rules framed thereunder.

14. I am aware of the observation of Mr. Macswinny, who is regarded as an authority on English law of Mines and Minerals, that no water in a

mine is absolutely pure and there are always some mineral substances which injure and taint the water but that does not in my view make such

water a mineral.

15. Another test of whether the water collected in the underground of a mine is mineral or not, is how it is accepted in the vernacular of the mining

and commercial world. It may properly be assumed that water has from the remote period of time found its way to the beds of seams of coal both

at the outcrop of the overlying deposits and water flows freely to, over and through the coal seams. It may further be assumed that water pumped

out from coal mine, is almost invariably impregnated with sulphur, coal gas, oil or other mineral hydro carbon as to render it unfit for its reasonable

use. But we should not take it as an axiom that water is mineral. In that event it would be pieces of jury wisdom, which a sensible tribunal should

bear in mind performing its task assessing in the context of a particular Act being applicable to the facts of a case. It should not be lost sight of that

water, in conducting mining operations is, on the one hand, and all important factor, on the other, a sort of common enemy to be met and

conquered by each mine owner and it is in most cases a danger to be got rid of. But it would be wrong to exalt water into the criterion of minerals.

My reason, grounded on my knowledge of the fact and the mining and allied laws, leads to an inference of fact amounting practically to knowledge

that the water pumped out from a coal mine cannot be classified as a mineral. If it is so defined and this I say not casually, not incidentally and not

collaterally, it would swallow up the meaning of the expression ''mineral''.

16. In this context the use and accumulation of the water in a mine and discharge of the same from the mine, are also to be considered. It is difficult

for a mine to be free from accumulation of water which is expected to be collecting in the underground when the coal is worked out in any system

stoop and room"", ""longwall"" or any other system in pits, quarries or inclines. If it is not pumped out it would tend to produce the drowning of the

mine as observed by the commissioner in the present case and to cause other damages from Its inflow.

17. A mine owner is prima facie entitled to pump water up to the surface from his mine and it is essential that the said operation which prevents the

flooding of a mine, must be taken to be ordinary, reasonable and proper. The Mines Act and the Regulations frames thereunder, make it

obligatory. It should not be forgotten that the occupier of a mine is entitled to all the minerals in his mine in a skilful and usual course of working and

to permit the escape of water which collects in the workings, is one of the legitimate operations conducted for that purpose.

18. The use of the water is no doubt intimately associated with the mining industry and in certain cases it becomes an indispensable auxiliary to the

various processes by which the miner extracts the metals from the rocks and are bearing earth. But that does not bring in the miner''s liability for

payment of cess merely on the ground of its appropriation or utilisation by a neighbouring industry using the water for an indefinite variety of

purposes, wholly dissociated with mining ventures. In order that the minerals must be properly and conveniently worked, ancillary rights are

conferred, which include amongst others, a right of drainage of the mines and a right to dispose of water or other liquid matter obtained from the

mines. If the water is offensive, the diversion of the same does not amount to appropriation. But the discharge of the water must not be made

wrongously, otherwise the mineral tenant would be prima facie answerable for all the damages that might result from its escape.

19. The tenant of mineral, particularly of a coal mine is normally under the constant vanishing expenses in sinking new pits, driving galleries,

pumping out water and the like and some of the expenses representing capital might be disallowed as working expenses of the colliery but that

does not justify the authorities, as in this case, to impose the cess on the sale price of water.

20. We come to the other branch of the argument namely that water is part of the land, ''land'' is a flexible term so as to include a mine and in fact,

everything under the sky down to the centre of the earth. The right to it might be severed from the soil which also may be used in the secondary

sense. The expressions sub-soil, upper soil are frequently applied in their geological sense but the particular signification of each of these words

may be varied largely by the context. The provisions of the Act, particularly chapter II of the same which deals with valuation of the land do not

bring in water even in a secondary sense. To treat such an argument favourably, would be destroying the Act and would be calculated to introduce

great confusion in the concept of land and mines, I would favour as much simplicity as is reasonably possible and as much freedom as legally

permissible from any limiting words and phrases.

I am unable to accept the learned Government pleader''s germ of the doctrine that water is a part of the land. Neither of these arguments I am

sorry can be insisted upon to the uttermost.

21. In conclusion, therefore, I am to think that the submission of Mr. Chakraborty to the effect that water is a mineral and that water is a part of the

land, cannot be accepted.

22. To come to the conclusion that imposition of the cess is wrongful, I am well content to be guided by the following reasons:

(i) The water discharged from the coal mines is not in some cases valueless to the colliery owners and it is a common sight that is pumped out and

discharged aimlessly from the pits, inclines, tunnels or quarries which everybody appropriates, but in the instant case as the water became by

chance serviceable to the neighbouring Glass Factory it becomes of value and constituted a source of profit; and the petitioner thus fell a victim of

the assessment. But in deciding the principle of assessment on the construction of the Cess Act and the Rules framed thereunder, an interpretation

covering the mine as a whole should be considered.

(ii) The sale of water is utmost a temporary, casual profit, as distinguished from the annual benefit that the mine owner should reap, which the Cess

Act suggests by the introduction of the expression, ''annual value''. There is no element of permanancy here. Under chapter V of the Act the cess

becomes an incident to the mines. The expression ''annual value'' appearing in the Act and the rule is not notional. The net annual value is

measured, at times, by the rent at which the property might reasonably be expected to let from year to year and the annual value must include the

annual profits of the colliery.

(iii) The Acts and the Rules have an eye to the profit from the mine but the mines, in the process of development of working, pumping out water,

yield in fact no profit.

(iv) water is a vagrant element which forms no part of the earth''s crust. It is not an essential ingredient of land. The legislature did not contemplate

in the Act or the Rules, fluids as being included in the term ''mine''. Nor could the water alone be the subject of mining lease of the Mines Act or

the Cess Act.

(v) It cannot be predicated in all cases that the water must be the property of the petitioner, working the minerals. It might be coming from the

lands other than those of the petitioner.

(vi) Suppose a person, in sterile occupation of an exhausted mine, or in possession of a virgin mine, in the process of development gives a licence

to another, on consideration of the water contained in the space underground, who in his turn pumps up water to the surface, would the mine

owner be liable to cess?

(vii) A drowned out colliery or mine is not rateable under the English Law while it continues in that condition, there being no beneficial occupation

in such a case.

(viii) There are miscellaneous duties which the owner of a mine is required to do on the temporary arrangement of or cesser of work at mine and

one of such duty is to pump out water.

(ix) The onus of proof that water is to be treated as a mineral is on the opposite party, State Government, raising the contention, which the tribunals

below wrongly placed upon the petitioner.

(x) Unless the liability is imposed by clear and unambiguous words in the Cess Act and the Rules framed thereunder, which are noted for simplicity

of expressions, it ought not to be held to affect the mine owners.

(xi) The long and uniform series of authorities appear to me to have established a very convenient and consistent system giving the mineral owner

every reasonable profit out of the mineral treasures. But nowhere it has been found for imposition of cess on water as yet.

23. Not being bound by direct authority, I see no feature in the present case rendering the above reasonings insufficient to attract the operation of

the Cess Act and the Rules on the sale of water pumped out from the mine and I have nothing to do now, except to say that, the learned

Government Pleader wholly failed to persuade a court of justice so that it can properly arrive at any conclusion, more favourable to the State Govt.

I am of opinion that the tribunals below were not right in holding that the petitioner''s claim is not well founded. The foregoing reasons are sufficient

to dispose of the case upon the first step in it.

24. To these I add, that laws have been enacted upon the subject of water encountered in the exploitation and development of mines. In the mining

regions of the United States we find that where water is necessary for the proper conduct of mining operations, the law has been altered by

customs but no custom ever approved the imposition of cess, as in the instant case. The English Judges inspite of the Charters of John and Edward

I, did not lay down rule as to the imposition of cess on water in mines. Even the early customs of the Western Miners and the U.S. Supreme Court

speaking through Judge Cooley and other learned Judges, never sanctioned such imposition of cess on water pumped out from the mine, as it

would be wholly incompatible, rather would be in direct antagonism to the liberal principles established and maintained by respected decisions of

the said highest courts in England and United States. A retrospective review for more than a century, as upheld and sanctioned by the English and

American courts, fails to disclose any judicial innovation by way of imposition of cess on water pumped out from the mines

25. Mines and minerals though assessable as separate tenements for land tax in England, water percolated and drained out from the mines, do not

appear to have been entered in any book as a distinct property, liable for payment of cese. It may be safely stated without examining or citing

authorities and on this point we do not meet either embarrassment or abudance or a divided court that the petitioner company by silent

acquiescance in the previous years could be held to have assented to the imposition of Cess on the water so discharged from the mines. The

passive acquiescence of the payment of cess can furnish no justification of the imposition of cess, which is not found sustained by the good reason

and by authority. The proposition of assessment of cess on land and mines under the Act and the Rule is based upon rational laws and the dictates

of common sense, not peculiar to any locality. It is being pursued with unvarying and same universal application of such laws, until interfered with

by the artificial interpretation by the tribunals below as in the instant case

26. Mr. Chakraborty drew my attention to an English decision in which in similar circumstances, the water was assessed to cess. He refers to the

case of (1) Attorney General v. Salt Union Limited (1917) 2 K.B. 488. The question for the opinion of the court in the said case was, whether

mineral rights duty was payable by the defendant on the rental value, as defined by S. 20 of the Finance (1909-10) Act, 1910, of the right to work

the brine in or under the defendant"s land. The brine so pumped out, was put by the defendant to commercial use, after salt is obtained by

evaporation of the water. It was held that the brine is a mineral. Brine is water fully saturated with salt, in other words, it is salt in solution whereas,

water is not coal in solution. If we refer to Halsbury"s Laws of England, Vol. 26, 3rd Edition, page 486 we find that the above case was dealt with

and it was observed that salt obtained from brine pumped to the surface, is mineral for the purpose of the mineral rights duty. In the instant case,

the water is not evaporated and no mineral is obtained thereafter. Here the water itself is sought to be assessable, which, in my view, it cannot be

so done. It would not be wise to place much reliance upon this case standing alone, and I find it impossible to grasp the reasonings advanced by

Mr. Chakraborty. It would also be borne in mind that in the English Quarries and Mines Act, 1954 there is a special definition of mine for rating

purposes, and the use, storage or removal even of the refuge from the mine is deemed to form part of the mine, but that is not the case in this count

27. I am invited to consider some old cases in which the courts sought to give guidance. I have noticed the following decisions viz., (2) Manindra

Chandra Nandi v. The Secretary of State for India, 5 C.L.J. 148 : ILR 34 Cal. 257 (3) The Secretary of State for India In Council Vs. Karuna

Kanta Chowdhury ., (4) Maharaja Manindra Chandra Nandi v. The Secretary of State for India in Council 15 C.W.N. 201 P.C. : ILR 38 Cal.

372 : 38 I.A. 31; (5) Secy. of State Vs. Sati Prasad Garga and Others, ; (6) Bengal Coal Co. Ltd. Vs. Sri Sri Janaradan Kishore Lal Singh Deo

and Another, ; (7) Jitendra Nath Roy v. Madan Mohan Das Mohanta Maharaj 41 C.W.N. 220 : AIR (1946) Cal. 88; (8) AIR 1938 243 (Privy

Council) ; (9) New Beerbhum Coal Co. Ltd. Vs. Chandan Mall Karnani, ; (10) Province of Bengal v. Hingal Kumari Daw 50 C.W.N. 184 : AIR

(1946) Cal. 217. I have also noticed three Patna decisions i.e., (11) Kusunda Navadi Collieries v. Bholanath Sarkar and ors. AIR (1926) Pat.

430 (12) Sourendra Mohan Sinha and Another Vs. Secy. of State, (13) Kamakshya Narain Singh Vs. Arjun Lal Agarwala and Another, , but I

have looked in vain. All that can be said is, that I do get no assistance from these decisions as they de not touch the present question which hat

directly arisen in the Instant case and accordingly I do not wish to deal with these cases except by noticing.

28. Mr. Hari Prasanna Mukherjee also relied on a Bench decision of this Court in the case of (14) State of West Bengal v. Indian Iron and Steel

Co. Ltd. only for the proposition that the Coal despatched from the disputed Ramnagar colliery to the Iron and Steel Factory of the respondent

was not liable to be assessed. It is not a good doctrine. The Supreme Court, through Ayyangar J. in the case of (15) Tata Iron and Steel Co. Ltd.

v. State of Bihar (1963) Supp. 1 S.C.R. 199 : AIR (1963) S.C. 557 has not accepted the said principle.

29. Considering all these varying conditions, the same end is reached by slightly different routes. No system of laws with which we are acquainted,

tolerates the imposition of cess on water discharged from a coal mine. To say that no heed should be paid when the petitioners are admittedly

making a profit, seems to me to be a wholly unwarrantable limitation. It would be to be last degree improbable for me to hold that the law should

be adjusted by the court only to the exigencies of the interest of the state only and that the production of the indispensable mineral, such as coal in

my view should not be crippled and endangered by accepting an interpretation that would make the collieries answerable in payment of an

additional cess, as is sought to be done in the instant case.

30. Though in the long history of taxation there are no bounds to human imagination, if this imposition of cess on water, discharged from a coal

mine, is legalised under the Cess Act and the Rules 1 should have been sorry to give a positive opinion that it would be taking the last rag off a

beggar"s back. I cannot accept the suggestion that the colliery owners, having swallowed the camel, would hardly strain at this gnat. Goethe, being

known as first class tax expert, could not even include such an imposition like the present, within his reforms though taxes on window, Harem

Jewellery, Beards, Titles or nobility, Titbits, April, Sparrow and Nightingales, Bed, Unbelievers, Air, Wine, Kinono Quipos, Villienage existed at

various times and in several countries over and above the existence of mineral duties called "Lot" "Cope" and "Tithe".

31. If it would have been the proper province even of a court of equity to permit the question to be of controlling force in such cases, I venture to

think that the conclusions arrived at by me, rest at least upon a plausible foundation and that they keep step with the industrial conditions of the

country and further it is readily apparent that a contrary holding would result not only in injustice but incalculable injury, great hardship and

inconvenience, not only to the immediate colliery owners, viz., the petitioners but also to the entire community of the colliery owners resulting from

such assessment. It must be candidly conceded that having enjoyed the advantages which colliery confers and even following the homely maxim of

the miners" law viz., "Live and Let Live" I see no violence either to any legislative enactment or of the judicial declaration in coming to any

conclusion other than the present. It seems to me that neither any principle, statute nor any authority supports the imposition of cess on the sale

price of water pumped out of a coal mine as in the instant case.

32. I appreciate the embarrassments which the tribunals below encounter when dealing with such difficult questions and I sympathise heartily with

them but the question should not have been lightly decided. The tribunals below should have been very guarded in the language employed in their

opinion as much depends upon the surrounding circumstances of each particular case and the danger lies in their erroneous application which on

the face of it does not purport to enunciate any general rule.

33. In my judgment, the light of the vital facts, the history of the Cess Act, the language of the mines, minerals, land and water in the context, the

very nature of the meaning which the enactment in Chapters II and V of the Act gives, unite in showing that water pumped up of a mine, is neither a

mineral nor part of the land and the sale price of such a commodity does not form part of the annual net profits from the mine and the discretion has

not been rightly exercised by the tribunals below. The principle easily applies to this case and to others engaged in like business which would guide

the tribunals; in defining the relevant rights of the mine owners vis-a-vis the State Government and the duties of the tribunals in the matter of

assessment. In other words it is one of universal application. This subject should not afford much latitude for judicial disagreement and in the

literature of this branch of jurisprudence, discordant decisions would not possibly be encountered. It would be an extreme doctrine if a contrary

opinion is announced by a Court of law and it would be extremely dangerous if the same is generally accepted. I am intending my words to be

mere servants to express the meaning. In the result, the Rule is made absolute and the orders passed by the tribunals below are set aside. As it is a

case of first impression, I think it right not to saddle the opposite party with any cost.