

(1966) 01 CAL CK 0015

Calcutta High Court

Case No: Matter No. 198 of 1963

Sonepur Coal Fields Ltd.

APPELLANT

Vs

The Coal Board and Others

RESPONDENT

Date of Decision: Jan. 20, 1966

Acts Referred:

- Industries (Development and Regulation) Act, 1951 - Section 11

Citation: 70 CWN 1074

Hon'ble Judges: A.N. Ray, J

Bench: Single Bench

Advocate: S. Banerjee and Noni C. Chakravarti, for the Appellant; P. Ginwalla, Somendra Chandra Bose and M.K. Banerjee, for the Respondent

Judgement

A.N. Ray, J.

This Rule was obtained by the petitioner requiring the respondents to show cause as to why a writ of Mandamus should not go commanding the respondents Nos. 1, 2 and 3 to recall, cancel or set aside the decision in favour of respondent No. 4 mentioned in letter No. 0/358A/4 dated May 17, 1963 and or to forbear from giving effect to the decision and all orders and directions if any pursuant thereto and further to issue an order according permission to the petitioner and also to show cause as to why a writ or order in the nature of Certiorari should not issue commanding the respondent No. 1 to produce in Court the records and proceedings relating to the said decision so that justice may be administered by setting aside or quashing the order. The petitioner is Sonepur Coal Fields Limited. The respondents are the Chairman, the Coal Board and Secretary, Coal Board and Ondal Coal Company Limited.

2. The order dated 17 May 1963 which has been impeached by the petitioner is to be found in Annexure "E" to the petition. By that order the Coal Board referred to the petitioner's letter dated 7 May 1963 received by Coal Board on 9 May 1963 and

stated that the petitioner had not produced any document and the reason for delay stated in the petitioner's letter was not acceptable and it was not possible to keep the matter pending indefinitely and the final decision had therefore been taken granting reopening permission to the Ondal Coal Company.

3. The Rule was limited to grounds (a), (b), (c), (g), (i) and (q) in paragraph 16 of the petition. The petitioner's case is that the respondent Ondal Coal Company agreed to give a sub-lease to the petitioner and that the terms were recorded in writing but for various reasons there was no execution of the deed. Further, the of the petitioner is that Ondal Coal Company delivered possession of the Coal Mines to the petitioner in pursuance of the agreement. The petitioner alleges that the petitioner has been in continuous occupation and possession of the Mines. The agreement alleged by the petitioner is that the respondent No. 4 agreed to give a sub-lease and it is further alleged that in the year 1945 the terms were reduced to writing and possession was taken by the petitioner sometime in the year 1946. The petitioner alleges that permission was granted to the petitioner under Colliery Control Order. In the year 1957 the petitioner applied to the Secretary, Coal Board for permission to reopen coal mines as required by Coal Mines (Conservation and Safety) Rules, 1954. In the month of September 1958 the Secretary, Coal Board, advised the petitioner to obtain a licence from the Central Government u/s 11 of the Industries (Development and Regulation) Act, 1951 before the case for reopening permission under Rule 39(1) of the Coal Mines (Conservation and Safety) Rules, 1954 could be considered by the Board.

4. In the year 1960 Ondal Coal Company called upon the petitioner to deliver vacant possession. In the year 1961 the petitioner was informed by Coal Board that an application had been made by Ondal Coal Company for reopening the Coal Mines. The petitioner thereafter wrote to the Inspecting Officer, Coal Board protesting against the action of Ondal Coal Company and objected to the grant of any permission as requested by Ondal Coal Company. In the month of February 1963 the petitioner's Solicitor wrote to the first three respondents who represented the Coal Board and their office that the petitioner was a sub-lessee under Ondal Coal Company and had been in continuous occupation since 1 June, 1946 and that Ondal Coal Company had no further interest than to receive royalties and rents and that the petitioner was the owner of the Colliery. A similar letter was written on 11 February 1963. The respondents received those letters and in the month of April 1963 the respondents asked for evidence of the petitioner's title and possession and receipts of royalty paid by the petitioner to Ondal Coal Company. On 7 May 1963 the petitioner's Solicitor wrote to the Coal Board that evidence would be furnished and made a reference to the petitioner's letter dated 4 February, 1963 and forwarded the comments of Ondal Coal Company in answer to the petitioner's letter dated 4 February 1963. On 17 May 1963 the Secretary, Coal Board wrote that the matter could not be kept pending indefinitely and that the petitioner's Solicitor had not produced any evidence, and a decision had therefore been taken granting

reopening permission to Ondal Coal Company.

5. Counsel for the petitioner relied on the definition of "agent," "mine" and "owner" in the Coal Mines (Conservation and Safety) Act, 1952. The definition occurs in section 3(1) : "Agent", "mine", and "owner" under the Coal Mines, Conservation and Safety Act, 1952 have the meanings respectively assigned to them in section 3 of the Indian Mines Act, 1923. The "owner" in the Mines Act is defined in s. 2(1). It is said, "owner" when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or Receiver but does not include a person who merely receives a royalty, rent or fine from the mine. Extracting the definition counsel for the petitioner contended that the petitioner was an owner within the meaning of the word "owner" in the Coal Mines (Conservation and Safety) Act, 1952 and the Mines Act, 1952.

6. Counsel for the petitioner secondly relied on Rule 39 of the Rules framed under the Coal Mines (Conservation and Safety) Act, 1952. Rule 39 deals with opening and reopening of coal mines. It is stated there that no coal mine or seam or section of a seam the working whereof has been discontinued for a period exceeding six months shall be reopened and no operation shall be commenced without the prior permission in writing of the Board and except in accordance with such directions as the Board may give. The Rule deals with granting of permission regarding gradation of coal and other ancillary matters. The reason why counsel for the petitioner relied on Rule 39 was in aid of the contention that the duties and powers of the Coal Board were of judicial or quasi-judicial character in dealing with the granting of permission.

7. Counsel for the petitioner in the third place relied on the Coal Board Manual published by the Coal Board, Calcutta in the year 1962 and in particular at page 37 which is described as a Manual in regard to opening and reopening of mine or seam. The reason why reliance was placed on the Manual was in support of the proposition that the owner, agent or manager of a mine had the right to apply in forms prescribed under the Manual. The form would appear at page 96 of the Manual. Requirement No. 4 of the form deals with the name and address of the owner.

8. Of the various grounds Counsel for the petitioner put in the forefront the ground that the respondents of the Coal Board acted in contravention of the provisions of the Act. Counsel for the respondents contended first that the Coal Board and the respondents thereof did not perform any judicial or quasi-judicial duty; secondly it was contended that the Coal Board did not have any duty to give reasons or grounds for their decisions and they were perfectly justified in making the order dated 17 May 1963 ; thirdly it was contended that it was not open to the petitioner to contend that the decision dated 17 May 1963 was made in violation of the

principles of natural justice ; fourthly it was contended that the petitioner had no legal right; fifthly it was contended that the petitioner was guilty of inordinate delay.

9. Counsel for the respondents submitted that rule 39 does not speak of owners and that there was no duty to decide and it was in any event an administrative decision ; secondly it was contended that question of title could not be determined by the Coal Board. If question of title could not be determined by the Coal Board and if there were rival contentions, I fail to see how yet the Coal Board made a decision which is rightly criticised by Counsel for the petitioner as not warranted by law. I am unable to accept the contention that the duties and powers of the Coal Board do not spell a duty to decide. There is, in my opinion, clearly a lis between the opposing parties. The lease is a right. The right is in regard to obtaining permission in regard to opening of a mine. It is a right affecting property. A dispute as to property requires determination. Such a determination is not to be made arbitrarily. Such a decision is to be made in accordance with the principles of law and justice. It requires adjudication. Adjudication means balancing the respective cases and rival contentions. That means that opportunity has to be given to the parties. Decision is to be made in a lawful manner. It is true that the Coal Board has the right to take the decision. But that does not mean that decision would be taken in a manner which has been done in the present case that in answer to the petitioner's letter the Coal Board would write that, the Coal Board could not wait indefinitely and decision had been taken. If the Coal Board took 2 months' time to reply the petitioner's letter, the Coal Board was not at all justified in rejecting the petitioner's application in a summary manner that it chose to do. The Coal Board shut its ears to the petitioner's application.

10. Where a duty is cast upon a statutory body and authority to discharge the functions imposed upon the body by law, such an authority is clothed with power not to exercise that power arbitrarily, but to exercise it in a lawful manner. The lawful manner means that the parties would be heard before the duty is discharged. It is said that the concept of natural justice does not enter the arena of mandamus. The courts should endeavour to assure administrative fair play through the concept of natural justice. Natural justice means that statutory bodies would in a just manner discharge the lawful duties.

11. I have no hesitation in coming to the conclusion that the statutory authorities in the present case failed to discharge their statutory duties and obligations. Just because the decision is that of the Coal Board, it does not mean that a person who claims entitled to be owner or lessee or proprietor in some manner of a mine will not have the right to be heard in regard to his application. It will be unfortunate if the Coal Board or any statutory authority were allowed to deal with applications in such summary fashion when owners of mine required some time to furnish information and their request is turned down with an abrupt reply that the Coal Board cannot wait indefinitely and the decision had therefore been taken. The Coal

Board could certainly have said that they were not prepared to wait indefinitely and that they would take a decision.

12. In the present case my conclusions are that the functions of the Coal Board were of quasi-judicial character and the decision impeached is to be struck down as being violative of the principles of natural justice. From the point of view of performance of statutory rights and obligations I am of opinion that the statutory obligation has not been discharged as statutory obligations have to be discharged by giving the persons concerned right to be represented.

13. There are some controversies in the present case as to whether possession has been given. It is apparent that in such applications these questions cannot be gone into. I do not wish to express any opinion on the question of possession. Counsel for the petitioner strongly criticised the affidavit-in-opposition of the respondent that the deponent had no knowledge of events in the year 1946 and the verification of the deponent's affidavit-in-opposition was also criticised that there was nothing in the documents to indicate as to how the respondent Ondal Coal Company re-entered possession. As I have indicated earlier, I do not wish to express any opinion on these rival contentions.

14. As to the contention on behalf of the respondent that the petitioner has no right, I am unable to accept the contention. Legal right is spoken of as distinct from equitable right. The law in the present case is to be found in the 2 Acts. The Acts confer power on the owner to apply. The petitioner is the owner. The petitioner has a legal right to apply. Legal right does not mean a right which is beyond any reproach. It is open to other parties to criticise the right of the petitioner, but the right of the petitioner under the law to apply exists.

15. The contention on behalf of the respondent that the application is barred by delay is, in my opinion, unacceptable. The decision was given in the month of May, 1963 and the petitioner came to the Court within 7 days. It is that decision which has been impeached by the petitioner. As to what happened in the years 1945 and 1946 or why the petitioner chose to wait is not of much importance. It cannot be lost sight of the fact that in the year 1958 when the petitioner was called upon by the Coal Board to obtain the licence under the Industries (Development and Regulation) Act, 1951 and thereafter the petitioner pursued the matter as late as 6 April, 1963, the Coal Board without such licence called upon the petitioner to furnish the office with copies of sub-lease and as to the dates of possession. That letter was in answer to the petitioner's letter dated 4 February 1963. The petitioner gave such information as the petitioner could. The respondent thereafter wanted the papers for further enquiry and an enquiry does not mean that the petitioner would not be given any opportunity to make its representations. As I have already indicated the petitioner should have been given an opportunity. I am, therefore, of opinion that the petitioner is entitled to succeed. I make it clear that as to the decision of the Coal Board it cannot be predicted that the Coal Board should act in a particular manner

save and except that the Coal Board should discharge its duties in accordance with law. The rule is, therefore, made absolute in the light of these observations, namely, the decision and order dated 17 May 1963 is quashed and the Coal Board and the respondents will act in accordance with law. This is a matter where I am of opinion that the parties should pay and bear their own costs.