

(1976) 11 CAL CK 0017**Calcutta High Court****Case No:** C.R. 3787 of 1974

Barakar Coal Co. Ltd.

APPELLANT

Vs

N.C. Mehta and Another

RESPONDENT

Date of Decision: Nov. 30, 1976**Acts Referred:**

- Coking Coal Mines (Emergency Provisions) Act, 1971 - Section 20, 3(a), 9, 9(1), 9(2)(b)
- Coking Coal Mines (Nationalisation) Act, 1972 - Section 4

Citation: 81 CWN 380**Hon'ble Judges:** S.K. Datta, J; H.N. Sen, J**Bench:** Division Bench**Advocate:** Tapas Kumar Banerjee and Monoranjan Das, for the Appellant; Susanta Kumar Upadhyay, for the Respondent**Judgement**

Salil Kumar Datta, J.

This Rule is directed against order No. 31 dated September 16, 1974 passed by the learned Judge 4th Bench, City Civil Court, Calcutta in Money Suit No. 49 of 1973 holding that the Court had jurisdiction to try the suit. The facts are that on January 17, 1973 the opposite party instituted the suit in the City Civil Court, Calcutta for recovery of Rs. 30743.38 against Barakar Coal Co. Ltd. the petitioner before us. The amount is stated to be the balance outstanding out of the amount advanced by the said opposite party to the petitioner for supply of premium hard coke from its Loyabad Coke Plant after giving credit to the supplies made to him by the petitioner from time to time. It appears that in the month of October, 1971, Coking Coal Mines (Emergency Provisions) Ordinance 1971, followed by the Coking Coal Mines (Emergency Provisions) Act, 1971 were brought into force whereby the management of the coking coal mines and coke oven plants in or about the said mines were taken over and vested in the Central Government with all assess pending nationalisation and a custodian was appointed for the general management of the said mines and coke oven plants. As a result the management of the Loyabad Coke Plant of the

petitioner was taken over with all assets and vested in the Central Government. Thereafter Coking Coal Mines (Nationalisation) Act, 1972 was promulgated on August 17, 1972 whereby the interest of the owners in coking coal mines and coke oven plants or about the said mines vested in the Central Government from the appointed day defined as May 1, 1972. The said mines and plants had since been managed by and vested in the Bharat Coking Coal Ltd., a Government Company under the provisions of the said Act. The said company impleaded as the defendant No. 2 in the suit, is now the opposite party No. 2 in this rule and it issued a certificate on February 23, 1972 stating that the amount claimed in the suit had been shown as per list of suspense account of the petitioner to the credit of the plaintiff. As inspite of demands the amount was not forthcoming the suit was instituted as already stated in the City Civil Court for a decree for the amount claimed therein against the petitioner. No relief was claimed against the said Government Company. The written statement was duly filed by the petitioner on January 14, 1974 and the specific defence taken was that the suit should be dismissed with cost against the petitioner in view of the provisions of the Coking Coal Mines (Nationalisation) Act.

2. Earlier on September 19, 1973 an application was filed on behalf of the petitioner contending that the court had no jurisdiction to proceed with the suit in view of the provisions of the Coking Coal Mines (Nationalisation) Act, 1972. The Act provided for the -appointment of a Commissioner of Payments for payment of the dues of the Coking Coal Mines and Coke Oven Plants arising prior to the appointed day, May 1, 1972. All such claims are to be lodged with the Commissioner for payment out of the amount paid to him by the Central Government on account of the nationalisation of the mines and coke oven plants. Accordingly, the court has no jurisdiction to proceed with the said suit. The court framed two issues on jurisdiction namely (i) Has the court no jurisdiction to try the suit on account of the provision of item 10 of the first schedule of the City Civil Court Act? (ii) Has the jurisdiction of the Civil Court to entertain and try such suit been ousted by the provisions of the Coking Coal Mines (Nationalisation) Act, 1972 ? In respect of the first issue the court following Rabindra Nath Ganguly and Others Vs. Calcutta Dock Labour Board, held that the court had jurisdiction to try the suit. In respect of the second issue, the court held that there was no ouster of the jurisdiction of the Civil Court under the provisions of the said Act. The rule is against this order.

3. Before we consider the respective contentions of the parties it will be necessary to look into the provisions of the Act. u/s 4, on the appointed day (which is u/s 3(a) the 1st May, 1972), the right, title and interest of the owners in relation to the Coking Coal Mines and Coke Oven Plants specified in the first and second schedules thereof stood transferred to and vested absolutely in the Central Government, free from all incumbrances. Section 9 is as follows:--

9 (1) "Every liability- of the owner, agent, manager, or managing contractor of a coking coal mine or coke oven plant in relation to any period prior to the appointed

day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government company.

(2) For removal of doubts, it is hereby declared that--

(a)

(b) no award, decree or order of any court, tribunal or other authority in relation to any coking coal mine or coke oven plant passed after the appointed day, but in relation to any matter, claims or dispute which arose before that day, shall be enforceable against the Central Government or the Government Company.

4. It is obvious from the above provision that the coking coal mines and coke oven plants were acquired by the Central Government free from incumbrances, and, any claim on or liability of any mine or plant in relation to any claim or dispute prior to the appointed day shall be the liability of such owner, agent, manager or managing contractor as the case may be and not of the Government or Government company. Further any decree passed after the appointed day in relation to any, claim or dispute which arose before that day shall not be enforceable against the Central Government or the Government Company.

5. Chapter 3 of the Act contains provisions for payment of the amount to be given by the Central Government for vesting in it the right, title and interest of the owner in such mines and plants. Such amount again are specified against it in the corresponding entry in the 5th column of schedule of the Act. Chapter 6 u/s 20 provides for appointment of a Commissioner of Payments to whom the amount payable for the vesting of mines or plants as aforesaid shall be paid for payment thereof to such owners of the respective mines or plants. u/s 23(1) every person having a claim against the owner of the coking coal mine or coke oven plant shall prefer such claim before the Commissioner within 30 days from the specified date (November 1, 1973) which period can be extended by the Commissioner in proper cases to a further period of 30 days if he is satisfied that the claimant was prevented by sufficient cause from preferring the claim in time. In sub-section (2) there is provision for certain preferential payments like wages or salary of employees, amounts due for contribution or Provident Fund or for workmen's compensation and the like. Sub-section 3 provides that the debts specified in sub-section (2) shall rank equally among themselves and to be paid in full unless the assets are insufficient in which case they shall abate in equal proportion and be paid accordingly. Sub-section 4 to 9 provides for investigation of the claims by the Commissioner and the procedure for determining such claims. Sub-section 10 provides for appeal against decision of the Commissioner. Section 24 provides that where the claims admitted by the Commissioner does not exceed the total amount credited to the account of the coking coal mine or coke oven plant, every such admitted claim shall rank equally among themselves and be paid in full and the

balance if any, shall to be paid to the owner but where such amount is insufficient to meet in full the total amount of the admitted claims, every such claim shall abate in equal proportions and to be paid accordingly.

Section 28 provides as follows:--

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this act or in any decree or order of any Court, tribunal or authority."

6. It has been contended by Mr. Banerjee appearing for the petitioner company that in view of section 28, the provisions of Act shall have effect notwithstanding anything contained in any other law or decree or order of any court. The Act provides for submissions of claims with the Commissioner and the mode of proof and payment in respect of such claims. This obviously implies, it is contended, that any creditor having a claim against the owner of such mines and plants accruing prior to the appointed day shall have to enforce the same in the manner laid down in the Act, that is, by lodging his claims with the Commissioner and not otherwise.

7. This contention though apparently attractive will be found untenable on scrutiny. It will be noticed that the Act does not take away the jurisdiction of the Civil Courts to enforce claims against owners of the mines or plants by the ordinary process of law. It only provides the procedure for payment of claim out of the amount paid by the Government for nationalisation of the mine or plant through the Commissioner due from such owner of the mine or plant in respect of matters claims or disputes arising prior to the appointed day. In view of the absence of any provision excluding the jurisdiction of Civil Court either expressly or by necessary implication in respect of such claims prior to appointed date, it appears that such matters, claims or disputes will be enforceable by the process of law subject to the condition that decree for such claims will not be enforceable against the amount in the hand of the Commissioner on account of nationalisation of the mine or plant as the Commissioner in law can only disburse the amounts against claims lodged with and admitted by him. The Act thus simply provides more convenient way of meeting the claims of the creditors so entitled against respective owners of the mines and plant out of the amount in hands of the Commissioner. If this procedure is not availed by any creditor he runs the risk of not being entitled to enforce the claim against the amount which under the law is with the Commissioner for acquisition of the assets of the mines and the plants.

8. It will further be seen that section 9(1) merely states, which section 9(2) (b) clarifies, that the decree or order of the court passed after the appointed day in relation to the claim which arose before the appointed day shall not be enforceable against the Central Government or the Government company. This clearly visualises the situation when the decree is passed after the appointed day in a Civil Court in

respect of any claim arising before the appointed date. The only prohibition is against the enforceability of the decree or order against the Central Government or Government Company. It is also provided that the claims against the owner of the mine or plant in matters arising prior to the appointed date can only be enforced against the amount, payable by the Government for nationalisation by lodging claims with the Commissioner of Payment and not otherwise. In respect of the decree for such claim or of the claim itself where the claim is not preferred before the Commissioner, the creditor runs the risk of realising his decree only against any asset as may belong to the owner or any money in his hand if any as the balance after payment of all claims by the Commissioner or otherwise.

9. The suit accordingly is maintainable in the Civil Court but the execution of the decree if passed will be against the money or assets that may be in the hands of the owner and not of the Commissioner or against the Central Government or the Government company. The learned Court was accordingly justified in holding that the court had jurisdiction to try the suit.

In view of the above the rule fails and is discharged but there will be no order for costs.

The records be sent down at once.

H.N. Sen, J.

10. I agree with my Lord that the Rule should be discharged. I would however, like to add a few words to justify such a conclusion. Section 9(1) of the Coking Coal Mines (Nationalisation) Act, 1972 in terms recognised the liability of the owner, agent, manager or managing Contractor of the Coking Coal Mine or Coke Oven Plant in relation to any period prior to the appointed day i.e. 1st day of May 1972 and about enforcement of the same against the owner company and it laid down that such liability of owner company will not enforceable against the Central Government or the Government Company.

11. Section 9(2) (b) visualises even decrees etc. after the appointed day, in respect of any matter, claim or dispute which arose before that day. It however laid down that such decrees etc. shall not be enforceable against the Central Government or the Government Company. Section 23(1) required every person having a claim against the owner of the Coking Coal Mine or Coke Oven Plant to prefer such claim before the Commissioner of Payment within 30 days from the specified date (i.e. 1st day of November 1973) and the period may be extended by the Commissioner in appropriate cases to a further period of 30 days if he was satisfied that the claimant was presented by sufficient cause from preferring the claim in time. The Act the decrees etc. visualised us. 9(2) (b) may be one passed after the appointed day without any further limitation. That being so, such decrees etc. may be one passed even after the specified day in which case there will be no question of preferring any claim before the Commissioner and the decree holder runs the risk of executing the

decree against the owner company from the other assets in its hands. In respect of decrees etc. obtained after the appointed day but before the specified day there will be no difficulty in preferring the claim before the Commissioner. The very fact that the Act visualises decrees etc. against the owner company in respect of its liability in relation to any period before the appointed day the Civil Court's jurisdiction to entertain claims in suits against the owner company is not ousted. In the circumstances the learned judge of City Civil Court, Calcutta, was justified in holding that the Court had jurisdiction to try the suit.