

**(1986) 01 CAL CK 0022****Calcutta High Court****Case No:** Appeal No. 170 of 1978

Valley Refractories Pvt. Ltd. and

Another

**APPELLANT**

Vs

K.S. Grewal and Others

**RESPONDENT****Date of Decision:** Jan. 13, 1986**Acts Referred:**

- Coal Mines (Nationalisation) Act, 1973 - Section 2(b), 2(h), 2(h)(a), 2(h)(vi), 2(h)(vii)

**Citation:** 90 CWN 615**Hon'ble Judges:** U.C. Banerjee, J; T.K. Basu, J**Bench:** Division Bench**Advocate:** Anindya Mitra, for the Appellant; Tarun Kumar Bose, for the Respondent**Final Decision:** Dismissed

### **Judgement**

U.C. Banerjee, J.

The principal question which falls for determination in this appeal is whether a weighbridge said to be belonging to the Appellant/Petitioner can be termed to be a "mine" within the meaning of section 2(h) of the Coal Mine Nationalisation Act, 1973 and consequent vesting of the same on to the Central Government in terms of Section 3 of the Nationalisation Act. The Learned Single Judge however rejected the contention of the writ petitioner and dismissed the writ petition. The Appellant/Petitioner contended that the weighbridge is situated on a plot of land on which a refractory plant has been installed by the petitioner no. 1 and the weighbridge was used by all and sundry including Nerho Collieries. In the counter affidavit filed by one Nirmal Chandra Das affirmed on 28th August 1973 on behalf of the respondents, it has been stated that it is situated within the leasehold area of Mehra Collieries, the management of which admittedly was taken over by the Coal Mines Authority.

2. In order to appreciate the contentions it is necessary to refer to some of the provisions of the Nationalisation Act, 1973.

Section 2(b) of the Act of 1973 provides that "coal mines" means a mine in which there exists one or more types of coal. The expression "mine" has been defined in Section 2(h) and means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes;....

(vi) all lands, buildings, works, sites, levels, places, machinery and equipment, instruments, stores vehicles, railways, tramways and siding in, or adjacent to, a mine and used for the purpose of the mine;

(vii) all workshops (including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which such workshops stand) in, or adjacent to, a mine and used substantially for the purpose of the mine or a number of mines under the same management.

(xii) all other assets, movable and immovable, belonging to the owner of a mine, wherever situated, and carry on assets, belong to mine whether within its premises or outside and also any money lawfully due to such owner in relation to the mine in respect of any period prior to the appointed date.

Section 3 of the Nationalisation Act reads as follows:

3. Acquisition of rights of owners in respect of coal mines: (1) On the appointed day, the right, title and interest of the owners in relation to the coal mines, specified in the schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances.

(2) For the removal of doubts, it is hereby declared that if, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, the provisions of Coal Mines (Taking Over of Management) Act, 1973, shall until that mine is nationalised by an appropriate legislation, apply to such mine.

3. Mr. Anindya Mitter, appearing for the Appellant/Petitioner, contended that since anybody could have the goods weighed on payment of charges, the weighbridge was never used exclusively by Mehra Collieries and there was no contract for use of the Weighbridge. Mere user of the weighbridge. Mr. Mitter contended without exclusive right to such user or a substantial user of the weighbridge would not attract Section 2(h)(a) of the Act of 1973 as contended by the Coal Mines Authority

4. On a plain reading of the provisions of the Nationalisation Act, it appears that the user of the words "used for the purpose of the mine" in Section 2(h) (vi) of the Act, 1973, and the words "used substantially for the purpose of the mine" as used, in Section 2(h)(vii) of the Act, do not pose any difficulty. The intention of the legislature is clear enough from the language used in clause (vi) and clause (vii) of Sub-section

2(h) of the Act of 1973. In this context, the language used in sub-clause (xi) wherein the legislature has used the words "solely used" may also be considered for the purpose of ascertainment of legislative intent. The legislature has used expressions in order to give a proper connotation to the sub-clause concerned. Whereas in clause (vi) the legislature thought it fit to use the word "used" but in sub-clause (vii) it has used "used substantially" and again in sub-clause (xi) it has used "solely used".

5. It is a golden rule of construction that the legislature uses the words and expressions knowingly and upon proper appreciation of its connotation. In that view of the matter the expressions "used for the purpose of the mine" cannot but only mean user simpliciter. Substantial user cannot be imported in clause (vi) as is apparent in clause (vii). To contend otherwise or to hold otherwise would be in our view a violent injustice to the legislative intent and contrary to well settled principles of interpretation and construction of statutory provisions.

6. The other aspect of the matter is in regard to the ownership of the weighbridge. Mr. Mitter contended that the owners of the Mehra Collieries had no right, title or interest in respect of the weighbridge and the same did not vest in the Central Government under the Nationalisation Act since the same did not belong to any coal mine nor being owned by the owners of the coal mine. Our attention was drawn to the Schedule to the Act of 1973, in particular serial no. 250, which provides that the Mehra Collieries at all material times was being owned by one Raghu Nath Agarwal but the weighbridge on the other hand was being owned by Valley Refractory, a private limited company having had no connection with the colliery in question.

7. Mr. T.K. Bose appearing for the respondent authorities, however, drew our attention to paragraph 50 of the counter affidavit filed before the court below wherein it has been expressly stated that the erstwhile factors of the Valley Refractory and the erstwhile owners of Mehra Collieries are all very close relations. In the affidavit in reply filed as against the counter affidavit, the factum of being a close relation not been properly denied. In any event, Mr. Bose contended that Section 20 read with Section 26(5) of the Nationalisation Act authorises the vesting of even third party rights in the event of fulfilment of the preconditions of vesting viz. weighbridge is in or adjacent to the mine and weighbridge has been used for the purpose of the mine and is within the meaning of Section 2(h)(vi) of the Nationalisation Act.

8. The expression "owner" has not been defined under the Nationalisation Act. But by reason of Section 2(o) of the Act of 1973 one ought to take recourse to the definition of "owner" in the Mines Act of 1952 which reads as follows:

Owner, when used in relation to a mine means any person who is the immediate proprietor or lessee or occupier of the mine or 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 and in the case of a mine owned by a company the business

whereof is being carried on by a managing agent such managing agent but does not include a person, who merely receives a royalty, rent or fine from the mine or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof or is merely the owner of the soil and not interested in the minerals of the mine, but any contractor for the working of a mine on any part thereof shall be subject to this Act in the like manner as if he were an owner but not so as to exempt the owner from any liability.

9. In our view the language used in Section 20 as also in 26(5) lends support to the contention of Mr. Bose. For convenience's sake Section 20 and 26(5) are set out hereunder:

20. "Every person having a claim against the owner of a coal mine shall prefer such claim before the Commissioner within thirty days from the specified date; Provided if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days but not thereafter."

20(5). "Where any machinery, equipment or other property in a coal mine has vested in the Central Government or a Government company under this Act, but such machinery, equipment or other property does not belong to the owner of such coal mine, the amount specified in the fifth column of the schedule against such coal mine shall, on a reference made to it by the Commissioner, be appropriated by the court between the owner of such coal mine and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.

10. The intent of the legislature is clear enough to indicate that even property not belonging to the owner of coal mine comes within the ambit of the Nationalisation Act of 1973. "Every person having a claim" in Section 20 in our view also clarifies the issue under consideration.

11. In any event, the definition of owner as set out above means any person who is the immediate proprietor of the mine. The whole question therefore centres round as to whether the weighbridge can be termed to be a mine within the meaning of Section 2(h)(vi) of the Nationalisation Act. There is no manner of dispute in regard to the fact of the weighbridge being termed as a machine within the meaning of Section 2(h)-(vi) of the Act of 1973. Further, the deed of lease also records that the weighbridge is situated in or adjacent to the coal mine belonging to Mehra Collieries.

12. Considering the aforesaid and in the view which we have taken as stated earlier we are of the opinion that the weighbridge falls evenly and squarely within the definition of Section 2(h) (vi) of the Act of 1973 and as such can be termed to be a mine in terms of the Nationalisation Act.

13. Mr. Mitter lastly contended that definition clause in a statute cannot, in any event, widen the provisions of the charging section and since Section 3, being the charging section herein, speaks of acquisition of rights of owners of coal mine, question of vesting of the weighbridge on to the Central Government does not and cannot arise.

14. In order to ascertain whether a particular object has vested in the Central Government or not, section 3(1) ought to be read with Section 2(h) of the Act. If the machinery concerned satisfies the condition laid down in Section 2(h) the same would then thus be deemed to be a mine within the meaning of Section 2(h) of the said Act and in that event the right, title and interest of the owner in relation to the coal mine by the very force of the definition of mine as given in Section 2(h) of the Act of 1973 would vest on to the Central Government. Owner has been defined in the Mines Act and includes any person who is an immediate proprietor or lessee or occupier of the mine or of any part thereof and by virtue of Section 2(h) of the Nationalisation Act such immediate proprietor is also the owner in terms of the Nationalisation Act and as such the immediate proprietor of the weighbridge which is a mine within the meaning of Nationalisation Act in relation to a mine comes under the ambit of u/s 3(1) of the 1973 Act.

15. Mr. Mitter placed strong reliance on the decision of the Learned Single Judge of the Bombay High Court in the case of *Tata Engineering and Locomotive Company Ltd. v. Bharat Mining Corporation & Ors.* reported in AIR 1980 Bombay 168 in support of his contention that the Act is not aimed at affecting the right, title and interest of those owners whose articles happened to be in the mine or were being used for the purposes of the mine. Mr. Mitter submitted that the decision of the Learned Single Judge under consideration in the present appeal was expressly dissented by the Bombay High Court. In our view the Learned Single Judge of the Bombay High Court has overlooked the provisions of Section 26(5) as well as the language used in Section 20 of the Act of 1973.

16. In our view Section 20 and various sub-sections and clauses thereunder read with the charging section is clear enough to imply that in the event of an item of machinery being termed as a mine within the meaning of the Act shall be subjected to the provisions of Section 3 of the Act even if belonging to third party. Narrower interpretation would be an attempt to undermine the true intent and spirit of the legislation as engrafted in the statute book. The Act of 1973 in our view ought to be read as a whole and considering the provision as a whole we do not find any justification for the observations of the Learned Judge of the Bombay High Court. We therefore record our dissent with the judgment of the Learned Judge of the Bombay High Court.

17. In any event, by reason of the decision of the Supreme Court in the case of New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, there cannot be any manner of doubt in regard to the proper interpretation of Section

2(h) of the Act of 1973. The Supreme Court observed that by reason of the enlarged definition of mine in Section 2(h) not merely the colliery but everything connected with the mining industry shall vest in the Central Government and it is not only that part of the industry which consisted of raising within and getting the coal but also that part which consisted in the sale of coal and its supply to customers both of which are a part of an integrated activity.

18. In our view, there is no manner of doubt or dispute that the weighbridge was used for Mehra Collieries and as such comes within the ambit of Act of 1973 and the right, title and interest of the weighbridge thus vested on to the Central Government by virtue of the provisions of Section 3 of the Act of 1973. In that view of the matter, we are not inclined to interfere with the findings of the Learned Judge. The appeal is, therefore, dismissed. There will, however, be no order as to costs.

T.K. Basu, J.

I agree.