
(1993) 10 CAL CK 0023

Calcutta High Court

Case No: Civil Order No. 16324 (W) of 1992

Asoke Kumar
Chaudhury

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Oct. 14, 1993

Citation: (1994) 2 ILR (Cal) 488

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Monotosh Mukherjee, Amaresh Chakraborty and Sujash Ghosh Dastidar, for the Appellant; Prodosh Kumar Mallick, R.N. Majumdar, Tapan Kumar Ray and Partha Bose, for the Respondent

Final Decision: Allowed

Judgement

Susanta Chatterji, J.

As suggested and agreed by the learned lawyers of both sides the matter has been taken up for final disposal expeditiously. This Case has a chequered background indeed. The writ Petitioner, who happens to be a first class Colliery Manager and has been working in the Coal Mining Industry in various capacities including the capacity of Manager and Agent for the last 32 years, challenges the order of suspension dated October 22, 1992, while an accident occurred in Madhusudanpur Colliery causing fatal injury to Tej Narayan Rajbhar, stowing mazdoor, in panel JT-16 in Jambad Top Section of Madhusudanpur Colliery on September 17, 1992, at around 1 p.m. due to collapse of the parting between Jambad Top Section and Jambad Bottom Section. The order of suspension was, however, stayed in an earlier writ petition permitting the Respondents authority to hold the departmental proceedings and to transfer the Petitioner to any other place. The present writ petition has been filed, however, challenging the charge-sheets dated October 28, 1992/November 4, 1992, issued by the Respondent No. 5, the Chairman-cum-Managing Director, Eastern Coalfields Ltd., in order to proceed against the Petitioner on the basis of the relevant Clauses 5.0(5), 5.0(9) and 5.0(22) of the Conduct, Discipline and Appeal

Rules, 1978 of the Company. The Petitioner has prayed for a writ of mandamus to command the Respondents Nos. 2, 3, 4 and 5 and each one of them to appoint the Respondent No. 10, Central Mining Research Station, a Government of India Undertaking, to investigate in the causes and circumstances leading to the said accident occurred on September 17, 1992 of Madhusudanpur Colliery in the district of Burdwan and to submit a report of such investigation before the Court.

2. The writ petition was entertained on November 23, 1992. An interim order was made by the Hon'ble Paritosh Kumar Mukherjee J. that the Respondent authorities should not be permitted to proceed further pending finalisation of the report by the Commission of Enquiry. The matter went on appeal and the enquiry was allowed to proceed. By order dated June 30, 1993, this Court having heard the learned Counsel for the writ Petitioner and for the E.C.L. authorities that the enquiry is proceeding in terms of the Appeal Court's order and there is every apprehension that the order of dismissal will follow and the leave is sought for to restrain the Respondent to live effect to the order of dismissal, if any, so as to enable the Court to consider the validity of the order of dismissal. It is submitted on behalf of the Respondent authorities that in terms of the Appeal Court the enquiry proceeding has to be completed within a period of four months and a final order has to be made. If there is any order of dismissal it will have a separate and new cause of action and the Petitioner cannot ask for any further interlocutory order. Considering all the aspects an interim order is made to the extent that it is open to complete the enquiry and to pass any final order in terms of the order of the Appeal Court. The final order may be communicated to the Petitioner but the Respondents will not give effect to the same for a period of three weeks from the date of communication of the said order. The said order was, however, challenged by the Respondents before the Division Bench. Leave was granted to the writ Petitioner to file an amended writ petition and an interim order was allowed to continue for a limited period. Pursuant to the leave granted by the Division Bench, an application for amended writ petition was filed on February 2, 1993. By order dated September 6, 1993, an application for amendment was allowed and the matter was specially fixed on September 29, 1993. The matter was finally heard on September 30, 1993. In the amended application the Petitioner has prayed, inter alia, to set aside, cancel, rescind and/or quashed the impugned order of dismissal under No. CIL/C-5A(ii)/N-827/563 dated July 21, 1993.

3. The Respondents have also filed affidavit controverting the allegations and there is a reply by the Petitioner reiterating the points raised in the main writ petition and also in the amended writ petition.

4. Looking at the materials on record it appears that admittedly an accident had taken place and as a result whereof one stowing mazdoor known as Tej Narayan Rajbhar was buried under sand on September 17, 1992. A Committee was constituted to submit a report of the fatal accident on September 22, 1992. Sri S.K. Sengupta, Dy. CME (Safety) submitted a preliminary investigation report enquiring the cause of the accident on October 15, 1992. The writ Petitioner was placed under suspension on October 22, 1992.

An order was made by this Court on November 2, 1992. In the previous writ petition to permit the writ Petitioner to be transferred and the Respondents authorities were allowed to proceed with the enquiry pursuant to the charges-sheet. The charge-sheet was made on November 4, 1992. The second writ petition was moved on November 23, 1992, as indicated above.

5. The writ Petitioner has seriously challenged the enquiry proceedings and the irregularity and illegality of the final order of dismissal.

6. Dr. Mukherjee, learned Counsel appearing for the writ Petitioner, has pointed out, inter alia, that in the instant case the management refused to supply B.N. Sarkar's report and in support of his contention he has referred to a case *Gadadhar Rambin v. Food Corporation of India* 1989 (4) S.L.R. 724. According to him, the charges framed in the charge-sheet were serious and complicated. The enquiring authority was a legal man. The Petitioner prayed for assistance of a lawyer which was refused and there was violation of the principle of natural justice as alleged.

7. Dr. Mukherjee has further argued that the charge-sheets framed and issued on the basis of the report submitted by the Officer of the "Internal Safety Organisation, Mr. S.K. Sengupta, who also admitted in the enquiry that he could not visit the spot and he had no personal knowledge about the voids left in the JB-16 panel and he did not consult with the records of JB-16 panel. He prepared the report on the basis of a statement given by Mr. Nichal Kora who was a stowing fitter where the said accident had taken, place. The said vital witness, Mr. Nichal Kora, was withheld and was not produced in the enquiry "and the Petitioner could not get the opportunity to cross-examine the said vital witness. Consequently, the enquiry was vitiated. He has drawn the inspiration from decision in *Collector of Customs v. Biswanath Mukherjee* 1964 Cri L.J. 251. There is another reference in *Gadadhar's* case (Supra). Dr. Mukherjee has highlighted that the charge-sheet was issued with a closed mind and the authorities prejudged the issue even at the stage of framing charges. Reference was made to a case in *Subrata Bhattacharjee v. Bharat Process and Mechanical Engineers Ltd. and Ors.* 1984 (2) C.H.N. 183 and also *Sunil Kumar Mukherjee v. State of West Bengal and Ors.* 1977 C.H.N. 1014 . He has also submitted that if the finding is purely based on surmise and conjecture the writ Court will be free to interfere. Dr. Mukherjee has also submitted that the order of dismissal should be also a speaking order to indicate that the authority concerned has applied his mind to the materials on record. He has referred to a decision in [The State of Punjab and Others Vs. Bakhtawar Singh and Others,](#)

8. Mr. Prodosh Kumar Mallick, learned Counsel appearing for Respondents, has submitted that the instant writ proceeding has been filed challenging the charge-sheet, enquiry proceeding and the final order of dismissal. The allegations are not warranted by the materials on record. There are lapses on the part of the Petitioner and such lapses laid to a fatal accident to Tej Narayan Rajbhar, a stowing mazdoor, on September 17, 1992. The charges have been proved and consequently the order of dismissal have

followed. Within the narrow scope of the adjudication by the writ Court, there is nothing to interfere. He has referred to a case, [Railway Board Representing The Union of India \(UOI\) Vs. Niranjan Singh](#), He has also referred to a case, in [Syed Yakoob Vs. K.S. Radhakrishnan and Others](#), . He has also referred to a decision in [Bhagat Ram Vs. State of Himachal Pradesh and Others](#), indicating that unless the findings are perverse the writ Court cannot interfere. He has also relied upon the decision in [State of Maharashtra and another Vs. Madhukar Narayan Mardikar](#), . As regards the right of the writ Court to interfere with the findings of the domestic Tribunal. Mr. Mallick has also emphasized the compliance of the principle of natural justice and he has drawn the attention of the Court in [Union of India \(UOI\) Vs. T.R. Varma](#), Mr. Mallick has also taken this Court to the pleadings of the purpose and tried to convince the Court that there is no irregularity nor any illegality in the enquiry proceedings and there is a free and impartial enquiry proceeding and the standard of proof cannot be put in a straight jacket formula and regard being had to the lapses on the part of the writ Petitioner, he cannot ask for any indulgence of the writ Court to survive.

9. Patiently, this Court has heard the submissions made on behalf of the respective parties. Upon perusal of the materials on record this Court finds that the whole Ranigunj belt has been found to be a dangerous area susceptible to subsidence as per the Expert Committee report. Attention of this Court has been drawn to the report of Bagchi Sub-committee formed by the Government of India to assess the possibilities of subsidence in Ranigunj and Jharia coal belt and this Committee observed specially for Madhusudanpur Colliery that all the dwelling houses over the workings of the Kajora Seam have to be vacated. The Kajora Seam workings were in existence in this area in three patches, as per the averments made in the writ petition and the same are not disputed and/or denied. It is placed on record that at Madhusudanpur Colliery work was being done in Jambad Seam-42 feet thick in two sections (top and bottom sections). Over Jambad Seam there is another seam named as Kajora Seam-20 feet thick, which was already worked out 40 years back and now filled with water. As Jambad Seam which is being worked below water-logged Kajora Seam, only partial extraction, i.e. splitting of pillars was permitted both in, top and bottom sections with sand stowing only as a special precaution to prevent any subsidence so that no water of Kajora Seam can come down to Jambad Seam and flood it. It has been pointed out that certain precautions were taken, namely,

- (a) Coal production in 33 and 34 levels were stopped and all workmen for production were withdrawn;
- (b) The area was thoroughly supported by props and cons;
- (c) Stowing was started in between 33 and 34 levels to stabilise the area.

Records indicate, inter alia, that stowing was started with minimum number of workmen, i.e., one Supervisor and one Stowing Gang consisting of three heads keeping in constant

vigil.

10. Admittedly, accident occurred on September 17, 1993 and later on massive roof fall occurred in JT-16 panel on September 20, 1992. The normal production in between sections started within two months and in top section after stowing 29 level normal production started after four months. In this background, it is found that the writ Petitioner was on authorised leave from September 16, 1992, for the treatment of his wife at Calcutta in the Birla Heart Research Institute. He was obviously not present in the colliery on the date of accident on September 17, 1992. He, however, joined on September 18, 1992. At the same time on September 18, 1992, Dy. Director of Mines Safety of DGMS also came to the colliery and started his enquiry regarding the said accident and the Petitioner was also present throughout his enquiry. Attention of this Court has been drawn to certain points as revealed during the said enquiry,

(i) on 17th September, 1992, at about 11 an the place where the accident occurred was inspected by the Manager, Safety Officer and the Assistant Manager of the Mine and they found no abnormality and stowing

was started at 11 a.m. in their presence. If there is any abnormality, they could easily withdraw the workmen from there, but no defect or abnormality or irregularity was directed by them.

(ii) Immediately after the accident when two workmen were involved (one was hanging holding the stowing M.S. pipe and the other buried in sand) one who was hanging was rescued immediately and for the other attempts were made by Mining Sardar, but he could not be rescued.

Every step was taken to rescue the victim, but the situation was beyond control. It is stated that precautions were taken inasmuch as the coal production of that area was stopped since a few days back and the workers for production were not engaged there. Only the stowing Gang with Supervisory staff were engaged there to stabilise the area. The area was thoroughly supported by props and cons.

11. The impugned charge-sheet is based on a report submitted by a Deputy C.M.E. of ISO of ECL. The C.M.D. did not wait for the report of the four member committee who were investigating into the causes and circumstances leading to the accident. The order of suspension of the Petitioner was, however, kept in abeyance and the enquiry proceeding was allowed to continue. By looking at the materials in depth this Court finds that the charge No. 1 against the Petitioner relates to extraction in JT-16 panel was finished sometime back in September 1991, but the panel was sealed in April 1992 without completing stowing of voids. The finding of the Enquiring authority has recorded that it is established that voids were there in JB-16 panel which led to collapse of parting and accident. It has also been recorded that the writ Petitioner Shri Chowdhury as an agent was very actively involved in day-to day operations of sand stowing and there was

major reasonability of the Petitioner. With regard to the charge No. 2, voids in JB-16 panel were also not stowed even after the occurrence of a small collapse of parting on September 14, 1992 and the Enquiring authority found that proper steps were not taken to fill up the voids elsewhere in the district. Charge No. 3 refers that the writ Petitioner did not inspect the site personally and persons were continued to be deployed in bottom section though the above collapse indicated such deployment unsafe because such collapse of parting was indication of voids in bottom section. Charge No. 5 refers to violation of this stipulation of the provisions of the DGMS permission letters for depillaring operations and commitment of breach of provisions of Coal Mines Regulations, Company's Circular/Instructions issued from time to time and the Petitioner did not take precautionary measures in time. Charge No. 6 refers to the fact that being aware of the above position, engagement of workmen was allowed in JB-16 panel thus endangering their safety and the Enquiring authority found that the Petitioner was guilty on such accounts.

12. The grievance of the Petitioner is that the findings of the Enquiry Committee is perverse inasmuch as the Petitioner has not committed any Act which is contrary to and inconsistent with the Company's instructions and the safety provisions under the Mines Regulations Act. There may be errors of judgment but there is no negligence on the part of the Petitioner nor his guilty in the manner has been found by the Enquiring authority. The Petitioner has further grievance that before passing the order of dismissal dated July 21, 1993 no opportunity was given to the Petitioner by supplying the copy of the report of the Enquiring authority to make a representation against the same.

13. Considering all the aspect of the matter and by looking to the charges levelled against the Petitioner and the enquiry proceedings and the findings of the Enquiring authority and also the final order of dismissal this Court is of the view that the writ Court has to examine the decision making process as found by the Hon'ble Supreme Court in a decision reported in AIR 1984 S.C. 197. Since the accident is a settled fact, charges appeared to have been levelled with closed mind as if the writ Petitioner has a major responsibility as to the stowing process and the cause of fatal accident to the stowing mazdoor. Curiously enough the Enquiring authority is a person who is engaged in a Legal department and looking after the cases on behalf of the Management against the writ Petitioner. The appointment of such personality as an Enquiring authority does not appear to be impartial and free of bias. The Petitioner immediately raised his objection and he participated in the enquiry proceedings without prejudice and/or produce. This Court has scrutinised the findings of the Enquiry Committee and the Court is of the view that the findings suffer from various infirmities and the conclusion by finding the Petitioner is guilty is perverse and not supported by the materials on record. The evidence does not disclose the direct responsibility of the writ Petitioner in spite of reasonable step is taken, the accident has occurred and the entire background of the case is very much significant to note. This Court finds that the materials therefore disclosed do not prove the offence of the Writ Petitioner and there is also violation of the principle of natural justice by appointing the

Enquiring authority who does not appear to be fair and to proceed with the matter by not supplying the relevant report to enable the Petitioner to explain his position in the proper perspective. Any order of dismissal on the basis of such enquiry report is unwarranted and uncalled for. Considering further all the aspect of the matter this Court finds that the charges levelled against the Petitioner have not been proved and the findings of the Enquiring authority is incorrect and perverse and the order of dismissal on the basis of such report cannot be sustained in law.

14. For the foregoing reasons this Court finds sufficient merits in the writ petition to allow the same. The impugned chargesheet, the enquiry proceedings the findings of the Enquiring authority and the order of dismissal of the writ Petitioner are accordingly set aside. The Petitioner is entitled to all consequence of reliefs.

15. A proper writ may be issued accordingly.

16. There will be no order as to costs.