MAHINDRA NATH SHUKLA AND ORS.

v.

STATE OF BIHAR AND ORS. ETC.

April 11, 1980

[V. R. KRISHNA IYER, O. CHINNAPPA REDDY AND A. P. SEN, JJ.]

Coal Mines (Nationalisation) Act, 1973 (Act 26 of 1973) as amended by Coal Mines (Nationalisation) Amendment Act, 1976, Section 3(3)—Whether the amendment relates only to Coal Mines and not to Coking Coal Mines—Words and Phrases—Meaning of "no person, other than the Central Government or a Government Company or a Corporation owned, managed or controlled by the Central Government.....shall carry on coal mining operations in India, in any form".

Dismissing the petitions, the Court

HELD : 1. "Coal Mine" in the 1976 Act includes coking coal mine and section 3(3) of that Act clamps down the ban on extraction of Coking Coal also. [601B-C]

History may illumine but cannot imprison interpretation. It is true that in 1971 when Parliament was faced with a crisis regarding need for coking coal in iron and steel industries, on an emergency footing was made solely confined to coking coal mines. The plan of the nation in regard to these natural resources was then embryonic and later final and there was step-by-step legislation to implement the policy on a phased programme. The culmination came in the blanket ban of 1976. [599D-E]

The expression in Section 3(3) is semantically sweeping and is wide in meaning so as to spare no class of coal, including even coking coal, because coking coal is a species of coal, coal itself being the genus. Section 2(b) of the 1973 Act defines coal mine to mean "a mine in which there exists one or more seams of coal". Even a coking coal mine is a coal mine because the definition is broad and this is clear from the definition of coking coal mine in Section 3(c) of the Coking Coal Mines (Nationalisation) Act, 1972. [600E-G]

Coking coal is more precious, strategically speaking, than other forms of coal and it would be an error, nay a blunder, to prevent private extraction of common coal and to permit removal of coking coal. It would be pathetic and bathetic for any policy-maker to be so egregious. Parliament may err but not be absurd! So construed, it is obvious that coking coal, which is more importantly needed for the nation than other supplies of coal, must be the last to be squandered away by permitting it to be privately exploited. [601A-B]

3. Even assuming there is a fire clay or other layer somewhere in the bowels of the earth the statutory mandate is that once you come up on a coal seam you shall stop extracting it to proceed beyond. May be some injury may be caused, fancied or real, but it is permissible for Parliament to make provision to prevent evasion of the purpose of the statute by prohibition of mining other minerals which may incidentally defeat the coal nationalisation measure. [601D-F]

A 4. Section 3(3) of the 1976 Act, being all inclusive and having been constitutionally upheld it is no longer permissible for any Court in India to appoint a receiver for or otherwise permit extraction of coal or coking coal. The Court cannot sanction the commission of a crime. [601G, H, 602A]

ORIGINAL JURISDICTION : Writ Petition Nos. 112-115, 175, 297, 194-198, 489-90, 459, 215, 2-3 and 432/80, 1477 of 1979, 1516-
B 1517/79.

(Under Article 32 of the Constitution)

AND

SPECIAL LEAVE PETITION (CIVIL) NO. 2746 of 1980.

From the judgment and order dated the 11th February, 1980 of the
C High Court of Calcutta in Appeal from an Order No. Nil of 1980.

A. K. Srivastava for the Petitioners in WP Nos. 213 and 175/80.

H. K. Puri for the Petitioners in WP Nos. 1516, 1517, 1477/79 and 2-3 of 1980.

M. P. Jha for the Petitioners in WP No. 297/80.
D

Dr. Y. S. Chitale, B. P. Singh and *Naresh K. Sharma* for the Petitioners in WPs Nos. 112-115/80.

P. R. Mridul and *D. P. Mukherjee* for the Petitioners in WPs 489-490 and 432 of 1980.

A. K. Sen, S. K. Sinha and *C. K. Ratnaparkhi* for the Petitioners
E in WPs. 194-198/80.

Dr. Y. S. Chitale, G. S. Chatterjee, and *D. P. Mukherjee* for the Petitioners in SLP No. 2746 of 1980.

S. K. Jain for the Petitioners in WP No. 439/80.

F *M. K. Banerjee* Addl. Sol. Genl. and *Miss A. Subhashini* for the Respondent No. 3 in WP Nos. 112-115, 175/80.

Lal Narain Sinha Att. Genl. and *U. P. Singh* for the Respondent State of Bihar and Its Official in WP Nos. 112-115/80, 1477/79, 175, 213, 2-3, 459, 489-90/80 and SLP No. 2746/80.

G *M. K. Banerjee,* Addl. Sol. Genl. and *S. B. Sinha* and *D. P. Mukherjee* for the Respondent No. 9 in WPs 112-115 of 1980.

Rathin Das for the Respondents (State of West Bengal) in WPs. Nos. 1516-1517/79.

S. S. Jauhar for the Interveners in WP No. 175/80.

H The Judgment of the Court was delivered by—

KRISHNA IYER, J.—We have a hunch—we leave it at that—that these "Workers" writ petitions are a kind of litigative puppetry,

the illicit mine exploiters being the puppeteers. This set of writ petitions, where some private managements claim to have the right to extract coking coal on the score that prohibition enacted in the Coal Mines (Nationalisation) Amendment Act, 1976 does not affect or operate on coking coal mines, must be dismissed as devoid of deserts. A

The short point sharply focussed by Dr. Chitale and echoed with some variant notes by other counsel, in support of these writ petitions may be briefly stated thus. According to him, the history of coal nationalisation legislation in this country in the seventies of this century shows that Parliament has treated coal and coking coal separately for legislative purposes in regard to taking over of management, nationalisation of onwership and the like. It all began with the year 1971 when Parliament enacted the Coking Coal Mines (Emergency Provisions) Act, 1971 (hereinafter called the 1971 Act, for short). It took over management of coking coal mines. Iron and Steel are key industries requiring, importantly, coking coal for their very survival. When Parliament found that coking coal was not being made available properly to the Industry on account of the unsatisfactory conduct of the private sector operating in this field, the entire management of coking coal mines was taken over on an emergency footing in the public interest by the 1971 Act. Thereafter, with more deliberation and detailed investigation, the management of coking coal mines (and of other coal mines) was taken over by appropriate legislation. Still later, after mature planning and understanding of implications, Parliament enacted legislation for vesting of ownership of coking coal mines and eventually of all coal mines. The Management of coking coal was taken over by the Central Government under Coking Coal Mines (Emergency Provisions) Act, 1971. The management of all other coal mines was taken over by the Central Government under the Coal Mines (Taking over of Management) Act, 1973. The second step after management came under the control of the Central Government was the actual nationalisation of ownership itself. This state of planning led to Parliamentary enactments of Coking Coal Mines (Nationalisation) Act, 1972 (36 of 1972) and the Coal Mines (Nationalisation) Act, 1973 (26 of 1973). The sequence of events shows the evolution of national policy in this regard. Coking coal, being absolutely essential, was first taken over urgently. Later on, the entire coal industry came under Parliamentary consideration and management thereof was taken over. Finally, the ownership of all coal mines, including coking coal mines, was vested in the Central Government and in certain instrumentalities created by Central Government. Thus we see that the comprehensive plan behind coal nationalisation did not permit of private agencies operating in the field. Coking coal was B C D E F G H

more strategic than ordinary coal having regard to its use for iron and steel industries. Nevertheless, it was found as a fact that on account of these mines being located in remote places and in jungles, especially in the State of Bihar and Bengal, the Central Government wanted to take effective steps to put an end to clandestine mining by any private agency. The jungle of laws haphzardly enacted partly helped the privateers get round the law and clandestinely or even through court receivers extract coal as there was big money in it. Therefore, the 1976 Act was enacted to plug all loopholes, virtually banish the private sector and to ensure legal success for Project Public Sector in the field of coal mining. Section 3(3) of the 1976 Act reads thus :

> 3.(3) On and from the commencement of section 3 of the Coal Mines (Nationalisation) Amendment Act, 1976 :—
>
> (i) the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government, or
>
> (ii) a person to whom a sub-lease, referred to in the proviso to clause (c) has been granted by any such Government, company or Corporation, or
>
> (iii) a company engaged in the production of iron and steel, shall carry on coal mining operation in India, in any form;
>
> (b) excepting the mining leases granted before such commencement in favour of the Government, company or corporation, referred to in clause(a), and any sub-lease granted by any such Government, company or corporation, all other mining leases and sub-leases in force immediately before such commencement, shall, in so far as they relate to the winning or mining of coal, stand terminated;
>
> (c) no lease for winning or mining coal shall be granted in favour of any person other than the Government, company or corporation, referred to in clause(a) :

Section 4 of the same Act super-adds severe punishment for contravention of the prohibition contained in s. 3(3). The total effect thus is clear. The Parliament wanted to prevent the mischief of coal mining and other illicit extraction of coal to the national detriment. Scratching, slaughter mining and such like activities on the sly were regarded as defeating the nationalisation scheme.

Counsel for the petitioners contended that the legislative history was relevant to the interpretation of s. 3(3) of the 1976 Act. In his submission, the amendment brought about in 1976 incorporating total interdict of mining applied only in relation to coal mines and not in relation to *coking coal mines*. For this argument he sought sustenance from the existence of two sets of legislation dealing with coal mines and coking coal mines throughout the 1970s. He further pointed out that even as late as 1978 when amendments were contemplated in regard to coal mines' and coking coal mines' nationalisation there were separate provisions separately inserted in both the nationalisation measures. He cited the 1978 Act as illustrative, even decisive. The absence of any mention of coking coal mines in the 1976 Act, was, in his submission, conclusive of the parliamentary intent in his favour, especially when read in the light of the history of the package of nationalisation legislations.

We are far from satisfied that there is substance in this submission. History may illumine but cannot imprison interpretation. It is true that in 1971 when Parliament was faced with a crisis regarding need for coking coal in iron and steel industries a legislation, on an emergency footing, was made solely confined to coking coal mines. As we have earlier explained, the plan of the nation in regard to these natural resources was then embryonic and later final and there was step-by-step legislation to implement the policy on a phased programme. The culmination came in the blanket ban of 1976. We are concerned here with the interpretation of s. 3(3) which we reproduce again for facility of reference at this stage :

> 3.(3) On and from the commencement of section 3 of the Coal Mines (Nationalisation) Amendment Act, 1976,—
>
> (a) no person, other than—
>
> (i) the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government, or
>
> (ii) a person to whom a sub-lease, referred to in the proviso to clause (c) has been granted by any such Government, company or corporation, or
>
> (iii) a company engaged in the production of iron and steel, shall carry on coal mining operation, in India, in any form;

A (b) excepting the mining leases granted before such commencement in favour of the Government, company or corporation, referred to in clause (a), and any sub-lease granted by any such Government, company or corporation, all other mining leases and sub-leases in force immediately before such commencement, shall, in so far as they relate to
B the winning or mining of coal, stand terminated;

(c) no lease for winning or mining coal shall be granted in favour of any person other than the Government, company or corporation, referred to in clause (a) :

C Provided that the Government, company or corporation to whom a lease for winning or mining coal has been granted may grant a sub-lease to any person in any area on such terms and conditions as may be specified in the instrument granting the sub-lease, if the Government, company or corporation is satisfied that—

D (i) the reserves of coal in the area are in isolated small pockets or are not sufficient for scientific and economical development in a co-ordinated and integrated manner, and

(ii) the coal produced by sub-lessee will not be required to be transported by rail.

E The short question of statutory construction turns on the meaning to be assigned to the expression "no person, other than the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government.....shall carry on coal mining operations in India, in any form". The expression
F is semantically sweeping and is wide in meaning so as to spare no class of coal, including even coking coal, because coking coal is a species of coal, coal itself being the genus. What is more, there is a definition of 'coal mine' in the Coal mines (Nationalisation) Act, 1973. Section 2(b) of the 1973 Act defines coal mine to mean "a mine in which there exists one or more seams of coal". It is apparent that
G even a coking coal mine is a coal mine because the definition is broad. It is inarguable that coking coal is not coal. This conclusion is reinforced by looking at the definition of coking coal mine in s. 3(c) of the Coking Coal Mines (Nationalisation) Act, 1972. Section 3(c) reads thus :

H "coking coal mine" means a coal mine in which there exists one or more seams of coking coal, whether exclusively or in addition to any seam of other coal.

Indeed, it is irrefutable, viewed literally, lexically, semantically, teleologically or applying the rule in *Heydon's case*(1) that coking coal mine is a coal mine. If it is a coal mine it is covered by the 1976 Act. Coking coal is more precious, strategically speaking, than other forms of coal and it would be an error, nay a blunder, to prevent private extraction of common coal and to permit removal of coking coal. It would be pathetic and bathetic for any policy-maker to be so egregious. Parliament may err but not be absurd ! So construed, it is obvious that coking coal, which is more importantly needed for the nation than other supplies of coal, must be the last to be squandered away by permitting it to be privately exploited. We have no hesitation in holding that 'coal mine' in the 1976 Act includes coking coal mine and s. 3(3) of that Act clamps down the ban on extraction of coking coal also.

It was feebly submitted that some of the mines may have fire-clay layers to reach which the mining operation may have to pass through coal seams; and, therefore, such operation cannot be prohibited. We are not impressed with this argument at all. Even assuming there is fire clay or other layer somewhere in the bowels of the earth the statutory mandate is that once you come up on a coal seam you shall stop extracting it to proceed beyond. Maybe, some injury may be caused, fancied or real, but it is permissible for Parliament to make provision to prevent evasion of the purpose of the statute by prohibition of mining other minerals which may incidentally defeat the coal nationalisation measure.

In this view we find no merit in any of the writ petitions and dismiss them all with costs.

It has been mentioned on more than one occasion in this court that interlocutory orders have been sought and obtained, that Receivers have been appointed by other courts and that they have been working these mines. In the face of the statutory prohibition which is imperative in tone and all-embracing in language, even punishable for violation, it is surprising that any Receiver could at all dare to work mines without running a grave risk. The court cannot sanction the commission of a crime. We make it perfectly plain that there will be no more authorisation for any receiver or other officer of court to extract coal or coking coal from any mine in India. Section 3(3) of the 1976 Act, being all-inclusive and having been constitutionally upheld by this Court, it is no longer permissible for any court in India

(1) [1584] 3 Rep. 7b.

A to appoint a receiver for or otherwise permit extraction of coal or coking coal.

These observations and reasonings must converge to only one conclusion that the crowd of writ petitions deserve to be and are hereby dismissed—of course, with costs. We would conclude with a conscientious query—will the State keep the coal mafia out, break the coal racket where government agencies are suspect and demonstrate that, the court having come to the aid of the Executive, nationalisation will fulfil the targets and tide over the crisis ? Caesar's wife must be above suspicion.

B

C

S.R. *Petitions dismissed.*