

MANU/BH/0147/1981

Equivalent Citation: 1982(30)BJR297

IN THE HIGH COURT OF PATNA

C.W.J.C. Nos. 3 and 29 of 1980 (R)

Decided On: 11.12.1981

Appellants:**Jagta Nand and Ors.**

Vs.

Respondent:**Rangjee Tiwari and Ors.**

Hon'ble Judges/Coram:

K.B.N. Singh , C.J., P.S. Sahay and P.C. Sahay, JJ.

JUDGMENT

P.S. Sahay, J.

1. Both these applications have been heard together and will be governed by this common judgment.

2. In C.W.J.C. No. 3 of 1980 (R) prayer has been made to quash the order of the First Additional District Judge, Dhanbad passed on 15.12.1979 by which the petitioners of that case have been ordered to appear in person and to show cause as to why they should not be proceeded under the Contempt of Courts Act, 1971. In C.W.J.C. No. 29 of 1980 (R) prayer has been made to quash the order of the Sessions Judge, Giridih, dated 14.12,1979 by which the petitioners of that case have also been ordered to appear in person and to show cause as to why they should not be punished for having committed Contempt of Court. Copies of both the orders have been filed in the two applications and marked as Annexure-1.

3. In order to appreciate the points, which have been raised in these applications, it will be necessary to state some facts which are to be found in the petition and also in the counter-affidavit filed by respondent No. 1, By two notifications dated 24. 8.1963 and 26.10.1963, 308. 75 acres of land were acquired by the Central Government under the Coal Bearing Area Act and possession was also taken over, except of two plots, 1341 and 953. There is one colliery known as Satighat Colliery which was a subject matter of dispute and for which Title Suit No. 66 of 1977 was filed in the Court of Subordinate Judge, first Court, Dhanbad by one Nawal Kishore Prasad Sinha against Rangjee Tiwary, respondent No. 1, and others for dissolution of partnership and for accounts. Prior to that Rangjee Tiwari filed a petition in the Supreme Court which was numbered as writ Petitions No. 152 and 153 of 1977 and on 27. 9. 1977 status-quo was ordered to be maintained as existing on 6th June, 1977 and the petitioners of the case were directed not to carry on any mining operation until further order of the Court. The copy of the order of the Supreme Court has been filed and marked as Annexure-10. After notice to the parties concerned final order was passed on 7.11.1977 on the assumptions that the petitioners in that case were entitled in law to work the mine on certain terms and conditions. A copy of the order has been filed and marked as Annexure-11.

4. Thereafter, respondent No. 1, Rangjee Tiwary, was appointed as Receiver in Title Suit on 16. 12. 1977 and to manage the Collieries and other properties mentioned in

the plaint. A copy of that order has been filed and marked as Annexure-B, The Central Coal Fields Limited, having come to know that respondent No. 1 has been appointed as Receiver in the suit for Satighat Colliery, which is a part and parcel of Giridih group of collieries belonging to the Company, filed an application that the Receiver should be asked not to interfere with the peaceful possession of the Company. The learned Subordinate Judge, Dhanbad, by his order dated 20. 3.1978 directed the Receiver not to work in Satighat Colliery until further orders which form part of Giridih Colliery. A copy of that order has been filed as Annexure-3. On 20. 5. 1978 an application was also filed on behalf of the State to discharge the Receiver after various Acts were passed and he had no right to work the mine. The matter was heard by the learned Subordinate Judge on 11. 9.1978 and respondent No. 1 was directed to continue as Receiver in respect of New Sonardih Colliery, Sundriadih Colliery and Jagannathdih Moulding Sand Mine and Kharia White Clay and China Clay only and he was discharged from the post of Receiver of other Collieries. A copy of the order has been filed and marked Annexure-4.

5. Against the aforesaid order Nawal Kishore Prasad Sinha preferred an Appeal which gave rise to Miscellaneous Appeal No. 10/4 of 1978 and the Additional District Judge by his order dated 23. 9.1973 stayed the operation of the order as contained in Annexure 4. A copy of that order has been filed as Annexure-D. Against the order granting stay the State preferred Civil Revision No. 296 of 1978(R) and the High Court Bench at Ranchi by its order dated 27. 10. 1978 stayed the operation of the order of the Additional District Judge. A copy of order has been filed as Annexure-E.

6. It may also be mentioned that against the order dated 11.9.1978 discharging the Receiver from some Collieries, One Bhoramal Agrawal filed an application before the Ranchi Bench of the High Court as intervenor which was registered as M.J.C. 71 of 1978 (R). The State of Bihar filed an application in Civil Revision 296 of 1978 (R) that in view of the decision of the Supreme Court in Civil Appeals 1029 and 1030 of 1978 the Receiver should be discharged from new Sonardih and Sudariadih Collieries. The relevant portion of the order of the Court reads as follows:

The lease in coal mine in question have vested with the State of Bihar, and, therefore, the possession of the State Government cannot be disturbed. The trial Court will discharge the Receiver and pass appropriate orders if the State Government have not taken over the Coal Mine in question they could take over immediately.

On this the parties agreed that the revision Itself should be heard and it was actually heard and orders were passed on 10. 5. 1979 and the State was directed to file an application before the learned Subordinate Judge, Dhanbad, for discharging the Receiver from the two aforesaid Collieries in view of the order passed by the Supreme Court. A copy of the order passed by the High Court at Ranchi has been filed and marked as Annexure-F. On 26. 5. 1979 an application was filed before the Subordinate Judge, Dhanbad, in pursuance of the order of the High Court to discharge the Receiver and the learned Subordinate Judge by his order dated 7. 7.1979 restrained the Receiver who was working the two Collieries until further orders and the matter was finally heard and the Receiver was ultimately discharged from working the two Collieries As against the aforesaid order Miscellaneous Appeal 81 of 1979 (R) was preferred which was admitted but prayer for stay was refused. A Civil Revision application was also preferred by the plaintiff of the suit which was numbered as C, R. 235 of 1979 (R).

7. One Churka Mahto, General Secretary of the Union of the aforesaid collieries, filed a writ application in the Supreme Court which was numbered as Civil Miscellaneous No. 1053 (W) of 1979 in which interim order was passed on 20.12.1979 by which Coal India Limited was asked to consider whether the Mines could be worked by it or through its Agent without further loss of time. It was also made clear that this observation was in the interest of the workers and not in the interest of lessees. A copy of the order has been filed and marked as Annexure-9. Thereafter, respondent No. 1 filed an application before Calcutta High Court on which interim order was passed and the opposite parties mentioned in the petition were asked not to interfere with the normal working, sale, movement and despatch of Coal from five Collieries including Satighat Colliery.

8. On 19. 10. 1979 a proceeding under Section 144 of the Code of Criminal Procedure was started between respondent No. 1, on the one side and the State of Bihar, on the other, regarding the properties in dispute. As against that Rangjee Tiwary moved the Sessions Judge, Dhanbad, who stayed the operation of the order till 5.12. 1979 and asked the members of the opposite party to file their show cause. It was alleged that in spite of prohibitory order passed under Section 144 of the Code of Criminal Procedure the petitioners in C.W.J.C. 29 of 1980 (R) came in a body to Satighat Colliery and assaulted the workers of the Colliery and looted away articles. On these allegations a prayer was made that proceedings for contempt of Court should be started against those persons, A copy of the petition filed before the Sessions Judge, Giridib, has been filed and marked Annexure-2 and it was registered as Criminal Miscellaneous 504 of 1979. The learned Sessions Judge on 14. 12.1979 passed the impugned order and directed the petitioners of C.W. J. C. No. 29 1980 (R) to appear in person and to show cause as to why they should not be proceeded for contempt. The order is Annexure-1. This order has been challenged in C.W.J.C. 29 of 1980 (R), In C.W.J.C. 3 of 1980 (R) a petition was filed before the Additional. District Judge, Dhanbad, against the 'petitioners of this case stating, inter-alia, that they came in a mob after forming an unlawful assembly, to Satighat Colliery on 4. 12.1978 and assaulted the workers and looted away some articles and had also lodged false cases without the permission of the Court which amounted to contempt of Court. That application was registered as Miscellaneous Case No. 5 of 1979 and the learned Additional District Judge by his order dated 15.12.1979, Annexure-1, issued notice to the petitioners of the case, C.W.J.C. 3 of 1980 (R) to appear in person and to show cause as to why they should not be proceeded for contempt of Court. The petitioners, in both the cases, have moved this Court for quashing the two orders passed by the two Courts which are Annexure-1 to the applications.

9. Before coming to the points raised in this application it will be necessary to give the background and history relating to the mining of Coal which is an important mineral as the source of energy in this country and constitutes a prime source of energy. The mines were being run by Companies or private individuals and it was found that due to reckless and unscientific methods of mining which were adopted by most of the Colliery owners without regard to consideration of conservation of the mineral and safety and welfare of workers, led the Parliament to pass various legislations on the subject. The Coking Coal (Emergency Provisions) Ordinance, 12 of 1971, was passed on 16th October, 1971 and was replaced by Coking Coal Mines (Emergency Provisions) Act, 64 of 1971, and was given retrospective operation from the date of the Ordinance. The management of Colliery was taken over from individuals in public interest on payment of compensation which was to be calculated under the provisions of Section 6 of Clause (2) of the Act. The Coking Coal Mines (Nationalisation) Act (36 of 1972) was passed by which the acquisition and transfer

of the right, title and interest of owners of Coking Coal Mines were taken over and some new sections were inserted by which penalties were imposed on person who violated the provisions of the Act. By an amendment Act, 56 of 1972, came into force on 12th September, 1972, by which a provision was made for premature termination of mining leases and the grant of fresh leases to the Government companies or Corporations owned and controlled by the Government. Thereafter the Coal Mines (Taking over of the Management) Act, 15 of 1973, was passed giving a retrospective effect from January, 1973 for taking over the management of the Coal Mines, pending nationalisation, in the public interest for promoting coal production and optimum utilisation of the coal resources consistent with the growing requirements of the country, and matters connected incidental thereto. The Coal Mines (Nationalisation) Act 26 of 1973 was given retrospective operation with effect from 1st May, 1973 by which the various complications which had arisen in taking over the mines were eliminated. On 29th April, 1976 the Coal Mines (Nationalisation) Amendment Ordinance which had come into force on 29th April, 1976 was replaced by Coal Mines (Nationalisation) Amendment Act, 67 of 1976. Under Section 3 mining lease in favour of individual stood terminated. Under Sub-clause (3) of that section Central or State Government, Company or Corporation were to obtain a prospective licence or mining lease in respect of whole or part of the land covered by the mining lease which stood terminated. Several writ applications were filed before the Supreme Court challenging the various Acts and Ordinances and in the case of *Tara Pro-sad Singh v. The Union of India and Ors.* MANU/SC/0088/1980 : [1980]3SCR1042, the aforesaid Acts were held to be valid and all objections raised in the applications were rejected and the laws were held to be valid.

10. Learned Attorney-General of India has submitted that the order passed by the two Courts asking the petitioners of the two cases, to appear in person and to show cause is arbitrary, unknown to law and completely mala-fide in order to harass and humiliate them and, therefore, should be quashed, He has, further, submitted that by various Ordinances and Acts, and decisions of the Supreme Court mining operation by private individual was an offence and in that view of the matter, the Court could not have directed the Receiver to do a thing which he was not entitled to do in law. Sri Prabha Shanker Mishra, appearing for respondent No. 1 in both the cases, has submitted that though a long counter-affidavit has been filed in one of the cases his client was not more interested in the matter. Learned Additional Advocate General, appearing on behalf of the State, has supported the stand taken by the Attorney General of India. After hearing the learned Counsel for the parties and after going through the various orders passed by the different Courts, referred to above, I am of the opinion that the contention raised on behalf of the petitioners has to be accepted. After taking over of the Coal Mines some of the owners could not reconcile themselves with that position and started taking shelter of the Courts by filing suits, in order to run the Colliery after being appointed as Receivers. On the other hand, actions were taken by the State Government and National Coal Development Corporation, now named as Central Coal Fields Limited, to take possession of those Collieries and for that actions were taken in the Court of law. The Receivers, on the other hand, in order to nullify their action, filed petition before the Supreme Court, One such application was filed on behalf of the Union on which order was passed on 21.9. 1979 in Writ Petition No. 1072 of 1979, Annexure-8. In that Writ application the Receiver, respondent No. 1, was also opposite party No. 4 and interim order was obtained. It is difficult to say whether the Union was really aggrieved or it was at the instance of the persons who wanted to run the Colliery and a similar matter had gone to the Supreme Court in the case of *Mahindra Nath Shukla and Ors. v. State of Bihar* A.I.R. 1980 S.C. 1309 Krishna Iyer, J. speaking for the Bench observed as follows;

We have a hunch, we leave it at that, that these "Workers" writ petitions are kind of litigative puppetry, the illicit mine exploiters being the puppeteers.

Their Lordships, while dismissing those applications, held that the Coal Mine Nationalisation Act, 1976 barred the extraction of Coking Coal by private individuals.

11. On the face of various enactments and decisions of the Supreme Court relating to mining laws, it must be held that respondent No. 1 was not entitled to work the mines even as a Receiver under the direction of the Court. Receivers are appointed under Order XI of the Code of Civil Procedure in a suit and he was an Officer or a Representative of the Court and functions under its direction. Such interim arrangements are necessary not only for the protection of the properties but also for the management till the dispute is not finally decided by the Court between the parties. But a Receiver cannot have more rights than the parties themselves. What a party could have done if he was managing the property himself is being done by a Receiver as held in the case of *Hira Lal Patni v. Loon Karan Sethya* MANU/SC/0015/1961 : [1962]1SCR868 . At the same time the Court can give a direction to the Receiver which is permissible in law. For example, if a Receiver brings to the notice of the Court that some members of the staff in collusion with outsiders were trying to spoil the properties, could the Court direct the Receiver to arrange for muselmen and throw them out of the Colliery. Again, if the Receiver informed the Court that some persons in authority were putting obstructions due to which there was a likelihood of loss in the business unless some amount was paid to them as illegal gratification, could such prayer be granted by the Court. The answer must be in the negative for the simple reason that a Court cannot permit a Receiver to do a thing which is illegal and contrary to law. In the instant case, the Receiver was discharged for Satighat Colliery and against that appeal and revisions were preferred but no stay was granted. If the respondent No. 1 was really aggrieved by the actions of the petitioners which, according to him, were unlawful, it was only fit and proper to have moved the Subordinate Judge, Dhanbad, who actually had appointed the Receiver but for the reasons best known to respondent No. 1 he preferred the two Courts who were not fully aware of the position, and all facts were also not placed before those two Courts which will be clear from Annexure-2, petition filed by the Receiver, and the Courts concerned also did not try to ascertain all the facts and simply relied on the petition filed by the Receiver.

12. Now coming to the facts of the case in C.W.J.C. 3 of 1980 (R) it was stated by the Receiver that the petitioners had interfered with the working of the Colliery and had also assaulted some of the workers and thus they were liable for contempt of Court. Prayer was also made to direct them to appear in person before the Court. The learned Additional District Judge, without applying his mind and without knowing the facts, passed a routine order. What is more surprising is the direction to the petitioners to appear in person. What was the object of this order is not at all clear. There is no such provision in the Contempt of Courts Act, 1971, or even under the Code of Civil Procedure. It has been vehemently contended by the learned Attorney General that it was to harass and humiliate the petitioners. From the facts and circumstances of this case and the sequence of events, mentioned above, the contention cannot be said to be without any substance. Similarly, in C, W. J. C. 29 of 1980 (R) a proceeding under Section 144 of the Code of Criminal Procedure was started and the Receiver moved the Sessions Judge who stayed the proceedings. The effect of such order will be that the proceeding under Section 144 of the Code was kept in abeyance. After that if there was any violation, as alleged by the Receiver, the Court, which passed the order under Section 144 of the Code and whose order had

been violated, could have taken action under Section 188 of the Indian Penal Code. The Receiver was interested that the petitioners should appear in Court and they should be harassed and humiliated and some of them are holding high offices, but the two Courts should not have been party to this. Thus, I am satisfied that the two orders passed by the two Courts of contained in Annexure-1 in the two applications have been passed without application of mind and are patently erroneous and, therefore, it is a fit case where this Court should interfere under writ jurisdiction. I therefore, allow these two applications and quash the two orders which are Annexure-1 in the two petitions. But in the circumstances of the case there shall, be no order as to costs.

K.B.N. Singh, C.J.

13. I agree.

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