Banwarilal Agarwalla vs The State Of Bihar And Others on 10 February, 1961

Equivalent citations: 1961 AIR 849, 1962 SCR (1) 33, AIR 1961 SUPREME COURT 849, 1961 20 FJR 300, 1962 2 SCJ 27, ILR 40 PAT 376, 1961 (2) CRI. L. J. 12, 1962 (1) SCR 33, 1961 BLJR 589, 1961 (1) LABLJ 249, 1961 2 LABLJ 140

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Bench: K.C. Das Gupta, Bhuvneshwar P. Sinha, S.K. Das, N. Rajagopala Ayyangar, J.R. Mudholkar

PETITIONER:
BANWARILAL AGARWALLA

Vs.

RESPONDENT:
THE STATE OF BIHAR AND OTHERS

DATE OF JUDGMENT:
10/02/1961

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1961 AIR 849 1962 SCR (1) 33
CITATOR INFO :
F 1957 SC 397 (43)
R 1963 SC 134 (6,7,13,22)

ACT:
Coal Mines Colliery company-Contravention of coal mines regulations-Prosecution of directors of Private company-Legality Regulations not referred to Mining Board-Effect-Coal Mines Regulations, 1957-Mines Act..1923 (4 of 1923). s..10-Mines Act, 1952 (3.5 of 1952), ss. 59(3),76-Constitution of India, Art. 14.

HEADNOTE:

Section 76 of the Mines Act, 1952, provides that where the owner of a mine is a private company any one of the shareholders thereof may be prosecuted and punished under this Act for any offence for which the owner of the mine is punishable. The appellant who was a shareholder and a director of a private company owning a colliery, was prosecuted for an offence under S. 74 Of the Act for contravention of Regulations 107 and 127 Of the Coal Mines Regulations, 1957. He challenged the validity of the prosecution on the grounds (1) that S. 76 of the Act in pursuance of which he who was not himself the owner of the colliery but only one of the directors and shareholders had been prosecuted, was void as it violated Art. 14 of 'the Constitution of India, and (2) that the Coal Mines Regulations, 1957, were invalid as they had been framed in contravention of s. 59 (3) of the Act, inasmuch as there was no consultation with a Mining Board before they were published as required by that sub-section. It was not disputed that when the Regulations were framed, no Mining Board as required under s. 12 Of the Act had been constituted. and so there had been no reference to any such Board,

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but it was alleged that there was consultation with the Mining Board constituted under s. 10 of the Mines Act, 1923.

Held: (1) that the words "any one" in S. 76 of the Mines Act, 1952, should be interpreted as "every one" and that under that section every one of the shareholders of a private company owning the mine was liable to prosecution.

Accordingly, s. 76 did not contravene Art. 14 Of the Constitution.

Chief Inspector of Mines v. Lala Karam Chand Thapar,[1962] 1S. C. R. 9, followed.

(2) that compliance with the provisions in s. 59 (3) Of the Act was mandatory.

State of U. P. v. Manbodhan Lai Srivastava, [1958] S. C. R. 533, distinguished.

Quaere, whether consultation with the Mining Boards constituted under the provisions of the Mines Act, 1923, would be sufficient compliance with s. 59 (3) Of the Mines Act, 1952.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 131 of 1959.

Appeal by special leave from the judgment and order dated November 21, 1958, of the Patna High Court in M. J. C. No. 805 of 1958.

G. S. Pathak, S. C. Banerjee and P. K. Chatterjee, for the appellant.

R. Ganapathy Iyer and B. H. Dhebar, for the respondents. 1961. February 10. The Judgment of the Court was delivered by DAs GUPTA, J.-On February 20, 1958, there occurred in the Central Bhowra Colliery, in Dhanbad in Bihar an accident as a result of which 23 persons lost their lives. After an inquiry under. a. 24 of the Mines Act, 1952, into the causes of and the circumstances attending the accident, and the publication of the report of the inquiry, a complains was prepared by the Regional Inspector of Mines, (Dhanbad, under the direction of the Chief Inspector of Mines, Dhanbad, before the Sub-Divisional Officer, Dhanbad, against the appellant for an offence under s. 74 of the Mines Act, 1952, for contravention of regulations 107 and 127 of the Coal Mines Regulations, 1957. The Central Bhowra Colliery belongs, and belonged at the relevant date to a private company, viz., M/s. Central Bhowra Colliery Co., Private Limited. The appellant is and was a shareholder and a director of this company. After the Sub- Divisional Officer took cognizance of the complaint and issued processes against him, the appellant made an application to the Patna High Court under Art. 226 of the Constitution, for the issue of an appropriate writ for quashing the criminal proceedings. This application was summarily dismissed. It if; against that order of dismissal that this appeal has been filed by special leave obtained from this Court.

The two main grounds on which the prayer for quashing the proceedings was based were: (1) that s. 76 of the Mines Act, 1952, in pursuance of which the appellant, who was not himself the owner of the colliery company, but only one of the directors and shareholders has been prosecuted, is void as it violates Art. 14 of the Constitution; (2) the Coal Mines Regulations, 1957, are invalid having been framed in contravention of a. 59(3) of the Mines Act, 1952. These two contentions were also urged before us in appeal. The first contention is based on an assumption that the word "any one" in s. 76 means only "one of the directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in s. 76 was raised in Criminal Appeals Nos. 98 to 106 of 1959 (Chief Inspector of Mines etc.) (1) and it has been decided there that the word "any one" should be interpreted there as "every one". Thus under s. 76 every one of the shareholders of a private company owning the mine, and every one of the directors of a public company owning the mine is liable to prosecution. No question of violation of Art. 14 therefore arises.

As regards the other contention that the regulations are invalid the appellant's argument is that the provisions of s. 12 and s. 59 of the Mines Act, 1952, are mandatory. Section 12 provides:-

> "(1) The Central Government may constitute for any part of the territories to which this. Act extends, (1) [1962] 1 S.C.R. 9.

or for any group or class of mines, a Mining Board consisting of-

> (a) a person in the service of the Government, not being the Chief Inspector or an Inspector, appointed by the Central Government to act as Chairman;
>
> (b) the Chief Inspector or an Inspector appointed by the Central Government;

> (c) a person, not being the Chief Inspector or an Inspector, appointed by the Central Government;
>
> (d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed;
>
> (e) two persons to represent the interest of miners, who shall be nominated in accordance with provisions laid down in the section."

Section 59 empowers the Central Government to 'make regulations consistent with the Act for all or any of the purposes mentioned therein, while s. 58 empowers the Central Government to make rules consistent with the Act for all or any of the purposes mentioned therein. Section 59 after providing in its first sub-section that the power to make regulations and rules conferred by sections 57 and 58 is subject to the condition of the regulations and rules being made after previous publication-provides in its third sub. section further conditions as regards the making of regulations. This sub-section runs thus:-

> "Before the draft of any regulation if; published under this section it shall be referred to every Mining Board which is, in the opinion of the Central Government concerned with the subject dealt with by the regulation, and the regulation shall not be so published until each such Board has had a reasonable opportunity, of reporting as to the expediency of making the same and as to the suitability of its provisions."

A similar provision was made in the fourth sub-section as regards the making of rules. By an amendment made in 1959 these two subsections have been combined into one. It was not disputed before us that when the Regulations were framed, no Board as required under s. 12 had been constituted, and so, necessarily there had been no reference to any Board as required under s. 59. The question raised is whether the omission to make such a reference make the rules invalid. As has been recognised again and again by the courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity or only directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that nonobservance of this would entail invalidity or did it not? To decide this we have to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the visions and the material danger to the public by pro the contravention of the same. In the present case we have to determine therefore on a consideration of all these matters whether the legislature intended that the provisions as regards the reference to the Mines Board could be contravened only on pain of invalidity of the regulation. Looking at the language of the section, we find, the legislature, after saying in the first part of sub-s. (3), that before any regulation is published, it "shall be"

> referred to every Mining Board which is, in the opinion of the Central Government concerned with the subject, and goes on to say in the latter part, that the regulation

"shall not" be published until each Board has had a reasonable opportunity of reporting as to the expediency and suitability of the provisions.

While it is true that language is only one of the many considerations which have to be taken into account in deciding whether a requirement is directory or mandatory, it is legitimate to note that the language used in this case is emphatic and appears to be designed to express an anxiety of the legislature that the publication of the regulation, which is condition precedent to the making of the regulations, should itself be subject to two conditions precedent-first, a reference to the Mining Boards concerned, and secondly, that sufficient opportunity to the Board to make a report as regards the expediency and suitability of the proposed regulations.

The cause of this anxiety becomes patent, when one examines the matters on which regulations can be made, Even a cursory examination of the purposes set out in the 27 clauses of s. 57 shows that most Of them impinge heavily on the actual working of the mines. To mention only a few of these, viz., cl. (c) under which regulations may be made for prescribing the duties of owners, agents and managers of mines and of persons acting under them; (g) for determining the circumstances 'in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager; (j) for prohibiting, restricting or regulating the employment of adolescents and women in mines;

(k) for providing for the safety of the persons employed in a mine; (m) for providing for the safety of the roads and working places in mines; (n) for the inspection of workings and sealed off fire areas in a mine; (o) far providing for the ventilation of mines; (r) for providing for proper lighting of mines and regulating the use of safety amps therein;-are sufficient to show that the very purpose of the Act may well be defeated unless suitable and practical regulations are framed to help the achievement of this purpose, Arbitrary and haphazard regulations without full consideration of their practicability and ultimate effect on the efficient working of the mines, would, apart from, often defeating the purpose of the Act, affect injuriously the general economy of the country.

That we are entitled to presume, is the reason behind the legislature's anxiety that Mining Boards should have an opportunity of examining regulations, and expressing their opinion before they are finalised. As has been already mentioned s. 12 which deals with the formation of boards provides for representation thereupon of two persons nominated by owners of mines or their representatives and two persons to re. present the interests of persons employed in mines, in addition to three persons representing the Government. The constitution is calculated to ensure that all aspects including on the one hand the need for securing the safety and welfare of labour and on the other hand the practicability of the provisions proposed from the point of, view of the likely expense and other considerations can be thoroughly examined. It is certainly to the public benefit that Boards thus constituted should have an opportunity of examining regulations proposed in the first place, by an administrative department of the government and of express- ing their opinion. It is true that the

law does not require concurrence of the Board with the regulations proposed. It is reasonable to expect however that when a Board has expressed an opinion in favour of the rejection or modification of a proposed regulation, the department would not treat it lightly. But, even where the opinion expressed by the Board is not accepted the very fact that there has been such an examination by the Board, and a consequent re. examination by the department is likely to minimise the risks to public welfare.

There can be little doubt therefore that generally speaking strict obedience of the command in sub-s. 3 of s. 59 regarding consultation with the Mining Board is likely to promote public welfare.

Let us now examine the matter from another aspect and ask ourselves the question: what risk there is to the public welfare of an insistence in all cases that the omission of consultation as enjoined in s. 59 would invalidate a regulation. Emergencies may arise, when in order that the public may not suffer. regulations must be framed with the least possible de-lay; and much valuable time may be lost if a reference must be made to all the Mining Boards concerned and opportunity given to them to express their opinion before regulations are made. In such cases, public interest may well be endangered if regulations, in order to be valid have to conform,to the requirements of previous consultation with, the Mining Boards. We find however that such cases of emergency have been specially dealt with in a. 60 of the Act, the operative portion of which runs thus:-

> "Notwithstanding anything contained in subsec- tions (1), (2) and (3) of section 59, regulations under clause (1) and clauses (k) to (a) excluding clause (1) of s. 57 may be made without previous publication and without previous reference to Mining Boards, if the Central Government is satisfied that for the prevention of apprehended danger or the speedy remedy of conditions likely to cause danger it is necessary in making such regulations to dispense with the delay that would result from such publication and reference".

Thus, the apprehended danger to public interest from requiring as a condition of the validity of regulations previous consultation with the Mining Board is averted. An examination of all the relevant circumstances, viz., the language used, the scheme of the legislation, the benefit to the public on insisting on strict compliance as well as the risks to public interest on insistence on such compliance leads us to the conclusion that the legislative intent was to insist on these provisions for consultation with the Mining Board as a prerequisite for the validity of the regulations.

This conclusion is strengthened by the fact that in s. 60 when providing for the framing of regulations in certain cases without following the procedure enjoined in s. 59, the legislature took care to add by a proviso that any regulation so made "shall not remain in force for more than two years from the making thereof". By an amendment made in 1959 the period has been changed to one year. It is not unreasonable to read this proviso as ex. pressing by implication the legislature's intention that when the special circumstances mentioned in s. 60 do not exist and there is no scope for the application of that section no regulation made in contravention of s.59 will be valid for a single day.

Strew was laid on behalf of the respondent on the fact that s. 59 does not require that regulations must have the concurrence of the Mining Boards; and it was pointed out that this Court in State of U. P. v. Manbodhan Lal Srivastava (2) in holding that Art. 320(3) (2) [1958] S.C.R. 533.

of the Constitution was not mandatory, relied, inter alia, on the fact that "the requirement of the consultation with the Commission does not extend to making the advice of the Commission, on these matters, binding on the government". While it is true that this Court did attach weight to this circumstance, we have to remember that this was the only one of the several circumstances, on the total consideration of which, the court decided that the provision for consultation in Art. 320(3) was not mandatory. One of these circumstances was that Art. 320(3) contained a proviso, which gave a clear indication "of the intention of the Constitution-makers that they did envisage certain cases or class of cases in Which the Commission need not be consulted". "If the provisions of Art. 320(3) were of a mandatory character", observed Sinha, J., (as he then was), while delivering the judgment of the Court, "the Constitution would not have left it to the discretion of the head of the executive government to undo these provisions by making regulations to the contrary". It has to be noticed, as pointed out above, that s. 60 of the Mines Act, 1952, also lays down clear provisions where the consultation as required in s. 59 need not take place. Here, however, the legislature has not left it to the discretion of the executive government "to undo these provisions by making regulations to the contrary". The legislature itself has given clear guidance as to the cases where such consultation need not be made by the Government. What is more, the legislature has laid down that regulations made without such consultation would have a limited life.

In Srivastava's Case (1) this Court quoted with approval the following observations of the Privy Council in Montreal Sirgeet Railway Company v. Nor. mandin (''):-

> "When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, (1) [1958] S.C.R. 533.
>
> (2) [1917] A.C. 170, 175.

or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

and applied the principle thus laid down to the case before it.

There is however no scope in the present case of applying this principle in support of the directory nature of s. 59(3). As we have pointed out above, the inconvenience that might be caused by holding regulations made in contravention of s. 59(3) invalid is removed by the provisions of s. 60; and on the other hand to hold that regulations may be validly made without following the procedure laid down in s. 59even in cases not falling within s. 60-is likely to be harmful to public interest, and to cause general incon- venience. It is really a converse case of what the Privy Council had to consider

in Montreal Street Railway Company's Case (1) and this Court considered in Srivastava's Case (2). For all the reasons given above, we are of opinion that the provisions in s. 59(3) of the Mines Act, 1952, are mandatory.

There remains for consideration the question whether these provisions were complied with before the Coal Mines Regulations, 1957, were I framed. As has been pointed out above, it was not disputed before us that at the time when the regulations were framed no new Mining Board had been constituted under the Mines Act, 1952, and consequently no consultation with any Mining Board constituted under the 1952 Act took place. It has been stated before us however on behalf of the respondents that the Mining Boards constituted under s. 10 of the Mines Act, 1923, were continuing to operate at the time these regulations were framed and that there was-full consultation with these Mining Boards before these regulations were framed.

(1) [1917] A.C. 170, 175.

(2) [1958] S.C.R. 533.

If in fact there was such consultation the further question would arise whether consultation with the Mining Boards constituted under the provisions of the Mining Act, 1923, would be sufficient compliance with the provisions of s. 59(3) of the present Act. Before these questions are decided it is not possible to come to a definite conclusion whether the Coal Mines Regulations, 1957, are valid or not. As there is not sufficient material before us to decide the question, whether in fact the Mining Boards constituted under s. 10 of the 1923 Act were functioning at the date when these regulations were made and whether these Boards were consulted before the regulations were framed, we have not thought fit to consider here the further question whether if such consultation had taken place that would be sufficient compliance with s. 59(3) of the 1952 Act. In the circumstances, the proper course, in our opinion, is to direct that the criminal proceedings pending in the court of the sub-divisional magistrate be disposed of by him or any other magistrate to whom the case may be transferred in accordance with law, after deciding the question whether there was consultation with Mining Boards constituted under s. 10 of the- Mines Act, 1923, before the regulations were framed and, if so, whether such consultation amounted to sufficient compliance with s. 59. If his conclusion is that there has not been compliance with the provisions of s. 59 the regulations must be held to be invalid and the accused would be entitled to an acquittal; if, on the other hand, he holds that there has been sufficient compliance with the provisions of s. 59 he should dispose of the case after coming to a conclusion on the evidence as regards the allegations made against the appellant in the petition of complaint.

The appeal is disposed of accordingly.

Appeal allowed. Case remanded.