

# Bhubaneshwar Singh vs Union Of India on 14 July, 1994

**Equivalent citations: 1994 SCC (6) 77, JT 1994 (5) 83**

**Author: N.P Singh**

**Bench: N.P Singh, Kuldip Singh, P.B. Sawant**

PETITIONER:

BHUBANESHWAR SINGH

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 14/07/1994

BENCH:

SINGH N.P. (J)

BENCH:

SINGH N.P. (J)

KULDIP SINGH (J)

SAWANT, P.B.

CITATION:

1994 SCC (6) 77                      JT 1994 (5)                      83

1994 SCALE (3) 334

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- This writ application has been filed on behalf of the petitioners, questioning the validity of the Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986, primarily on the ground that it purports to nullify the judgment of this Court in the case of Central Coal Fields Ltd. v. Bhubaneswar Singh<sup>1</sup>. The Ordinance has been replaced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986.

2. In order to appreciate the controversy involved in this case, it is proper to refer to the background in which the aforesaid amending Act was passed. The Coking Coal Mines (Emergency Provisions)

Ordinance was promulgated in the year 1971, which was replaced by the Coking Coal Mines (Emergency Provisions) Act, 1971. In view of Section 3 of the aforesaid Ordinance/Act, management of all the Coking Coal Mines vested in the Central Government on and from 17-10- 1971, being the appointed date. The Central Government appointed Custodians to take over the management of the Coking Coal Mines. Such Coking Coal Mines remained under the management of the Central Government through the Custodian during the period from 17-10-1971 to 30-4-1972. The Coking Coal Mines (Nationalisation) Act, 1972 came into force w.e.f. 1-5-1972, the appointed date. In terms of Section 4 of the said Act, on and from the appointed date the right, title and interest of the owner-, in relation to the Coking Coal Mines specified in the First Schedule stood transferred to and vested absolutely in the Central Government free from all encumbrances. The provisions of the Coking Coal Mines (Nationalisation) Act, 1972 as amended by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 were challenged before this Court in the case of Tara Prasad Singh v. Union of India<sup>2</sup>. A Constitution Bench upheld the validity of the said Act.

3. Petitioner 1 (hereinafter referred to as 'the petitioner') was the owner of Turiyo Colliery, a Coking Coal Mine, listed under Serial No. 7 in the First Schedule of the Nationalisation Act. Along with other Coking Coal Mines, the management of the aforesaid Coking Coal Mine had been taken over by the Central Government on 17-10-1971 and it remained under the management of the Central Government up to 30-4-1972. During the period aforesaid, the ownership of the said Coking Coal Mine continued to remain with the petitioner. As such the Central Government and/or its Custodian 1 (1984) 4 SCC 429 : (1985) 1 SCR 618 2 (1980) 4 SCC 179 :(1980) 3 SCR 1042 were to account to the petitioner, profit and loss during the aforesaid period while it was under the management of the Custodian.

4. The petitioner filed an application under Article 226 of the Constitution before the High Court, making a grievance that the Custodian had debited the expenses for raising the coal while the Coking Coal Mine was under the management of the Custodian but had not credited the price for the quantity of coal raised, which was lying in stock on the date prior to the date the said Coal Mine vested under the Central Government. The High Court allowed the said application holding that the petitioner was the owner of the said coal mine and was entitled to credit for the stock of coal lying unsold as on 30-4-1972. A direction was given that account be recast and payment be made to the petitioner.

5. The Central Coal Fields Ltd., one of the respondents of that application, filed an application under Article 136 of the Constitution, before this Court. Leave to appeal was granted. But ultimately the appeal was dismissed on 23-8- 1984. This Court said: (SCC p. 433, para 11) "Admittedly the amount claimed from the owner represents the cost of extraction of the coal from the mine. The appellants had conceded before the High Court and Mr Sinha appearing for them before us accepted the position that if the extracted coal had been sold before the appointed day, the owner would have been entitled to the price. The mere fact that the extracted coal remained in stock at the commencement of the appointed date can make no difference to the position. The expenses were to be set off against the sale price of the stock to be received at the time of disposal. Therefore, the stock of coal had to be taken into account for balancing the position. Reliance on the definition of 'mine' and Section 10 of the Nationalisation Act to counteract this conclusion cannot avail the

appellants. Indeed, the submission advanced on behalf of the appellants is so much opposed to common sense logic of the matter that in the absence of a legislative mandate we have no hesitation in rejecting it."

This Court was of the view that the sale price of the stock of extracted coal lying at the commencement of the appointed date had to be taken into account for determining the profit and loss during the period of management of the mine by the Custodian.

6. Thereafter the aforesaid Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986 as already mentioned above was promulgated, which was later replaced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986. By Section 4 of the Amending Act aforesaid, sub-section (2) was introduced in Section 10 of the Coking Coal Mines (Nationalisation) Act, 1972, which is as follows:

"(2) For the removal of doubts, it is hereby declared that the amount specified in the fifth column of the First Schedule against any coking coal mine or group of coking coal mines specified in the second column of the said schedule and required to be given by the Central Government to its owner under sub-

section (1) shall be deemed to include, and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock or other assets referred to in clause (j) of Section 3 on the date immediately before the appointed day and no further amount shall be payable to the owner in respect of such coal or other assets."

7. Section 19 of the Coal Mines Nationalisation Laws (Amendment) Act, 1986 contains a validating provision:

"19. Validation.- Notwithstanding any judgment, decree, order or direction of any court to the contrary

(a) every amount paid to the owner of every coking coal mine or group of coking coal mines under Section 10, or of every coke oven plant under Section II, of the Coking Coal Act, or to the owner of every coal mine or group of coal mines under Section 8 of the Coal Mines Act (hereafter in either case referred to as the owner), shall be deemed to include and be deemed always to have included the amounts required to be paid to the owner in respect of coal in stock or other assets, coke in stock or other assets, referred to in clause (j), or clause (b) of Section 3 of the Coking Coal Act or as the case may be, coal in stock or other assets referred to in clause (h) of Section 2 of the Coal Mines Act, on the date immediately before the appointed day as if the provisions of Section 10, or Section II, of the Coking Coal Act or as the case may be, Section 8 of the Coal Mines Act, as amended by this Act had been in force at all material times, and no such payment shall be called in question in any court on the ground that it had not included the value of such coal or coke or other assets;

(b) every statement of accounts or supplementary statement of accounts prepared by the Central Government or the government company under Section 22 of the Coking Coal Act or under Section 19 of the Coal Mines Act shall be deemed to have been validly prepared as if the provisions of Section 22 of the Coking Coal Act or, as the case may be, Section 19 of the Coal Mines Act, as amended by this Act had been in force at all material times, and no such statement of accounts or supplementary statement of accounts shall be called in question in any court on the ground that it had not been prepared in accordance with the normal commercial practice or that any item has or has not been included in such statement;

and accordingly, no suit or other legal proceeding shall be maintained or continued in any court-

(i) for the recovery of any sum on the ground that the amount paid to the owner under Section IO or Section II of the Coking Coal Act or under Section 8 of the Coal Mines Act, does not include the amounts required to be paid in respect of all coal or coke in stock or other assets referred to in clause (a); or

(ii) for the recovery of any sum as being the excess of receipts over payments on the ground that the statement of accounts or supplementary statement of accounts required to be prepared under Section 22 of the Coking Coal Act or, as the case may be, Section 19 of the Coal Mines Act, had not been prepared in accordance with the normal commercial practice or that any item has or has not been included in such statement.

Explanation.- In this section,-

(a) 'appointed day' means,-

(i) in relation to the Coking Coal Act, the 1st day of May, 1972; and

(ii) in relation to the Coal Mines Act, the 1st day of May, 1973;

(b) 'receipts' and 'payments' mean receipts and payments in the statement of accounts prepared under Section 22 of the Coking Coal Act or, as the case may be, Section 19 of the Coal Mines Act."

8. As sub-section (2) has been introduced in Section 10 of the Nationalisation Act with retrospective effect, it shall be deemed to have been there since 1-5-1972, the day the Coking Coal Mines (Nationalisation) Act, 1972 came into force. The said sub-section provides and declares that the amount specified in the fifth column of the First Schedule against any coking coal mine specified in the said schedule which was required to be given by the Central Government to its owner under sub-section (1) shall be deemed to include, and deemed always to have included "the amount required to be paid to such owner in respect of all coke in stock or other assets referred to in clause (b) of Section 3 on the date immediately before the appointed day and no further amount shall be

payable to the owner in respect of such coke or other assets". It cannot be disputed that if sub-section (2) was in existence on the date the writ application had been filed on behalf of the petitioner, there would have been no occasion for the High Court or this Court to direct that the account be taken also of the stock of coke lying on the date immediately before the appointed day because the amount which is payable to the petitioner shall be deemed to have included the payment even in respect of such coke.

9. The question is as to whether by introduction of sub- section (2) in Section 10 with retrospective effect, i.e., w.e.f. 1-5-1972, the respondents are absolved of their liability and are exonerated from the responsibility of complying with the direction given by the High Court and this Court in the earlier writ application filed on behalf of the petitioner. It is well settled that Parliament and State Legislatures have plenary powers of legislation on the subjects within their field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned. Sub-section (2) of Section 1 of the Coal Mines Nationalisation Laws (Amendment) Act, 1986 clearly and specifically says that the said amendment to the Coking Coal Mines (Nationalisation) Act, 1972 shall be deemed to have come into force on 1-5-1972. Sub-section (2) of Section 10 which has been introduced with retrospective effect says that the amount which has been mentioned in the schedule to be payable to the owner shall be deemed to include and deemed always to have included the amount required to be paid to such owner in respect of all coke in stock on the date immediately before the appointed day. The amount which is to be paid as compensation for acquisition of right, title and interest of the petitioner in the coking coal mine in question, shall include the compensation for all coke in stock on the date immediately before the appointed day. It can therefore be said that the amendments which have been introduced retrospectively, have taken away the substratum of the claim made on behalf of the petitioner, in respect of the price of the stock of coke lying on the date immediately before the appointed day.

10. The question which however still requires to be examined is as to whether by this process which negatives the claim made on behalf of the petitioner, even the effect of the judgment of the High Court and this Court has been nullified. Section 19 of the Coal Mines Nationalisation Laws (Amendment) Act, 1986 referred to above says that notwithstanding any judgment, decree, order or direction of any court to the contrary every amount paid to the owner of every coking coal mine under Section IO shall be deemed to include and deemed always to have included the amount required to be paid to the owner in respect of the coke in stock on the date immediately before the appointed day, as if the provisions of Section 10 as amended by the said Act had been in force at all material times, and no such payment shall be called in question in any court on the ground that it had not included the value of such coal or coke.

11. From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statute retrospectively because

of which the statute or the part of it had been declared ultra vires. Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored.

12. In the case of *Shri PC. Mills Ltd. v. Broach Borough Municipality*<sup>3</sup> Hidayatullah, C.J. speaking for the Constitution Bench said: (SCC pp. 28687, para 4) "When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal.

Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law."

The same view has been expressed in the cases of *West Ramnad Electric Distribution Co. Ltd. v. State of Madras*<sup>4</sup>, *Udai Ram Sharma v. Union of India*<sup>5</sup>, *Tirath Ram Rajindra Nath v. State of U.P.*<sup>6</sup>, *Krishna Chandra Gangopadhyaya v. Union of India*<sup>7</sup>, *Hindustan Gum & Chemicals Ltd. v.*

<sup>3</sup> (1969) 2 SCC 283 : AIR 1970 SC 192; (1970) 1 SCR 388 <sup>4</sup> AIR 1962 SC 1753; (1963) 2 SCR 747 <sup>5</sup> AIR 1968 SC 11 38 (1968) 3 SCR 41 <sup>6</sup> (1973) 3 SCC 585 1973 SCC (Tax) 300: AIR 1973 SC 405 <sup>7</sup> (1975) 2 SCC 302: AIR 1975 SC 1389; 1975 Supp SCR 151 *State of Haryana*<sup>8</sup> and *Utkal Contractors and Joinery (P) Ltd. V. State of Orissa*<sup>9</sup>.

13. In the present case as already pointed out above, if sub-section (2) as introduced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 in Section 10 had existed since the very inception, there was no occasion for the High Court or this Court to issue a direction for taking into account the price which was payable for the stock of coke lying on the date before the appointed day. The authority to introduce sub-section (2) in Section 10 of the aforesaid Act with retrospective effect cannot be questioned. Once the amendment has been introduced retrospectively, courts have to act on the basis that such provision was there since the beginning. The role of the deeming provision need not be emphasised in view of series of judgments of this Court. Hence reading sub-section (2) of Section 10 along with Section 19, it has to be held that respondents are not required to take into account the stock of coke lying on the date prior to the appointed day, for the purpose of accounting during the period when the mine in question was under the management of the Central Government, because it shall be deemed that the compensation awarded to the petitioner included the price for such coal lying in stock on the date prior to the appointed day. Neither any compensation is to be paid for such stock of coal nor the price thereof is to be taken into account for the purpose of sub-section (1) of Section 22 of the Coking Coal Mines (Nationalisation) Act, 1972. It need not be pointed out that subsection (1) of Section 22 shall be applicable where the statement of accounts is to be prepared in respect of each coking coal mine taking into account the expenditure incurred in raising the coal and the price of the coal raised during the period when such coking coal mine was under the management of the Central Government or the government company. In view of the aforesaid sub-section (2) introduced in Section 10 of the Coking Coal Mines (Nationalisation) Act, 1972 and Section 19 of the Coal Mines Nationalisation Laws (Amendment) Act, 1972, it shall be deemed that the Compensation has been paid even for the stock of coal lying on the date prior to the appointed day.

14. On behalf of the petitioner, reference was made to the case of D. Cawasji & Co. v. State of Mysore<sup>10</sup>. In that case, it was held that Section 3 of the Mysore Sales Tax (Amendment) Act, 1969 was unreasonable insofar as it sought to nullify the High Court judgment which had become final and binding on parties. From a bare reference to the aforesaid judgment it shall appear that this Court pointed out that the amendment did not proceed to cure the defect or to remove the lacuna pointed out in the earlier judgment by bringing in an amendment. As such it was not a Validating Act and it could not nullify the judgment of the High Court, because the defect had not been removed by the said Act. In other words, the Validating Act had not served its purpose. In the present case, the lacuna or defect has been removed by 8 (1985) 4 SCC 124: AIR 1985 SC 1683 : 1985 Supp (2) SCR 630 9 1987 Supp SCC 751 : AIR 1987 SC 2310: (1988) 1 SCR 314 10 1984 Supp SCC 490: 1985 SCC (Tax) 63 : AIR 1984 SC 1780:

(1985) 1 SCR 825 introduction of sub-section (2) in Section 10 of the Act with retrospective effect. Sub-section (2) of Section 10 as well as Section 19, both have specified that the amount which is to be paid as compensation mentioned in the schedule shall be deemed to include and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock on the date immediately before the appointed day. As such the earlier judgment of this Court is of no help to the petitioner.

15. Accordingly the writ application is dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.