

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
SHRI A.B. SHAH & OTHERS

DATE OF JUDGMENT: 09/05/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
HANSARIA B.L. (J)

CITATION:
JT 1996 (5) 128 1996 SCALE (4)307

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.VENKATASWAMI, J.

Aggrieved by the judgment in Criminal Appeal no.24/81 dated 26.8.1988 on the file of Bombay High Court (Nagpur Bench), this appeal is filed by special leave.

The appellant preferred a complaint under section 73 of the Mines Act 1952 (hereinafter referred to as "the Act") read with Regulation No. 100 (1) of the Coal Mines Regulations 1957 (hereinafter referred to as "the Regulation"). The facts leading to the filing of this Appeal may be stated in brief to appreciate the contentions raised before us. The facts are as under :

Kamptee Colliery originally was owned by the Oriental Coal Company Limited. At the instance of the agent of Oriental Coal Company Limited, the Director General of Mines Safety granted permission on 2.1.1971 under Regulation 100(1) of the Regulations to split pillars in conjunction with hydraulic sand stowing in No. 1 seam in the area. Later on, the agent of the Oriental Coal Company Limited applied for certain modifications in conditions Nos. 5 and 6 which was granted on 14.6.1971. Subsequently, on 30.1.1973, the possession of the coal mines was taken over by the Central Government and the ownership of the said coal mines vested in the Coal Mines Authority on 9.8.1973. The Deputy Director of Mines at Nagpur made an inspection on 2.4.1974 and found that the sizes of split galleries were about 8.2 meters. It was in violation of condition No.1 imposed by the Director of Mines Safety. The agent was called upon to explain the violation by the Joint Director of Mines Safety by his letter dated 30.4.1974. A reply was sent on 13.5.1974. Explanation was called for from respondent No.1 on 10.8.1974. No reply was received, inspite of several reminders. The Deputy Director of Mines Safety again inspected the mines in question on 26.8.1975, along with the agent, and found the violation of condition No.1 continuing and also found that the adjacent galleries were not kept

stowed of the pillar where splitting had commenced. After the taking over of mines as mentioned above. the coal mine in question formed part of the Western Coal Fields Limited. As the concerned persons had not complied with the conditions subject to which the splitting of pillars in conjunction with hydraulic sand stowing was granted, the Inspector (now, Deputy Director of Mines) filed a complaint in the Court of Judicial Magistrate, First Class, Ramtak, Nagpur, alleging contravention of the conditions of permission. The Trial Court framed charges accordingly to which respondent Nos. 1 to 4 pleaded not guilty and claimed to be tried. Two principal contentions were advanced in defence before the Trial Court. They were that the complaint was barred by limitation prescribed under Section 79 of the Act and in any case, respondent Nos. 1 to 4 were not in management of the coal mines in question when the alleged offence was alleged to have been committed and, therefore, they could not be criminally proceeded against.

The learned Trial Judge accepted both the contentions of respondent Nos. 1 to 4 and consequently acquitted them. On appeal preferred by the appellant, the High Court also confirmed the acquittal accepting the same contentions. Hence the present appeal.

Before dealing with the question of law that arises for Our consideration, we want to express our anguish that we did not get the required assistance in this case. The appellant except filing the Judgment of the High Court and the grounds for special leave did not take any step, inspite of passing of 13 years to file other important relevant papers to help the Court in deciding the issue, i.e. the judgment of the Trial Court, the charge sheet filed in the Trial Court, the evidence - both oral and documentary, reply given by the agent for the initial notice etc. They are all required to fully appreciate the issue raised before us. The further agony is that inspite of notices served on the respondents, none appeared before us to answer the contentions raised in this Appeal. In this state of affairs, we have decided the issue on the basis of the typed judgment of the High Court which alone is made available, apart from the grounds in the special leave petition.

The learned counsel appearing for the appellant submitted that the Trial Court as well as the High Court grossly erred in not accepting the contention put forward on behalf of the complainant/appellant that the offence committed by the respondents being 'continuing' in nature falling under Explanation (a) to Section 79 of the Act, the complaint was not barred by time. He also submitted that the High Court having rightly noted that out of 10 conditions, non-compliance of condition Nos. 3 and 6 would fall under 'continuing offence', fell into an error in holding that all the conditions must be read conjunctively and not disjunctively. If the offence is a 'continuing offence' falling under Explanation (a) to Section 79 of the Act, then notwithstanding the fact that respondent Nos. 1 to 4 were not in office when the offence was first detected, they are answerable to the charges levelled against them.

We have perused the judgment of the High Court. Before going to the actual question, it is necessary to set out the conditions subject to which the permission was granted. As the document was not typed and produced before us, we are setting out the relevant portion from the judgment of the High Court which reads as follows :

"By the letter ex.27 dated 2nd January 1971, the Director General of Mines Safety granted to the

Agent of the Messrs. Oriental Coal Company Limited, Kamptee Colliery "permission under regulation 100(1) of the Coal Mines Regulations, 1957 to split pillars in conjunction with hydraulic sand stowing in No. 1 seam in the area indicated in plan No.1 Dep/15/70 dated 26.6.70 at Kamptee Colliery" subject to the following conditions :

1. Each pillar shall be divided into four equal stooks by central dip and level splits. For different depths, the maximum and minimum dimensions of galleries and stooks respectively shall be as follows :

For depth Gallery which Stooks shall be not exceeding shall not less than exceed

60 metres	5.4 metres	5 mts x 5 mts
90 metres	5.4 metres	6.6 mts x 6.6 mts
120 metres	5.4 metres	9 mts x 9 mts
153 metres	4.8 metres	10.5 mts x 10.5mts

2. The final height of original and split galleries shall not exceed 3.6 meters.

3. After splitting is completed all original and split galleries shall be stowed solid with sand.

4. Not more than two pillars shall be under splitting at any time in a panel.

5. A pillar shall not be split unless all original and split galleries on the inbye side have been fully stowed.

6. Not more than a total length of 45 meters of split shall be left unstowed at any time in a whole panel. (Emphasis added)

7. Before starting splitting of pillars in a panel, it shall be insulated by stoppings in compliance with the provisions of regulation 100(4) of the Coal Mines Regulation, 1957, and an intimation to that effect shall be sent to this Directorate and the Joint Director of Mines Safety. These stopping shall be constructed to the specifications laid down in this Directorate Circular No.17 of 1964 as modified by Circular No.1 of 1968.

8. No splitting or reduction of pillars shall be done beneath and in the vicinity of dwelling/building or public road, if any, likely to be affected by the splitting operations.

9. In the event of any change in the circumstances connected with this splitting permission, which is likely to affect the safety of the work persons or the mine or the

surface features, an intimation shall be sent immediately to this Directorate and the Joint Director of Mines, Safety and splitting operations shall be stopped. The splitting of pillars shall not be resumed, except with permission in writing from the Director General of Mines, Safety.

10. The above permission may be amended or withdrawn at any time, if considered necessary.

By letter ex.28 dated 8th April 1971, the Agent of the Oriental Coal Company, Kamptee Colliery applied to the Director General of Mines Safety, for certain modifications in conditions Nos. 5 and 6 of the above conditions and by the letter Ex.31 dated 14.6.1971 the Director General of Mines, Safety accepted the proposal and modified these conditions. These modified conditions were as follows :

Condition No.5 :

A pillar shall not be completely split unless all original and split galleries on the inbye side have been fully stowed. (i.e. the word "completely" was added) and

Condition No.6:

Not more than 150 meters of split galleries shall be left unstowed at anytime in the whole panel. (i.e. the figure "150 meters" was substituted for the original words "45 meters").

It is seen from the judgment of the High Court that it accepted that violation of condition Nos. 3 and 6 would constitute 'continuing offence' in the light of Sections 73 and 79 of the Act read with Regulation 100 of the Regulations. The High Court however held as follows :

"Here, Shri Bobde for the respondents Nos. 1 to 4 very rightly pointed out that the gist of the offence alleged under Section 73 of the Mines Act, 1952 in the present case is 'dipillaring' in breach of the conditions contained in Ex.27 dated 2.1. 1971 and not the breach of the said conditions themselves. Analyzing the provisions of Section 73 of the Mines Act, 1952, it was pointed out that the section contemplates 3 categories of contraventions made punishable thereunder :

(a) Contravention of any provisions of the Mines Act, 1952, or

(b) Contravention of any regulation, rule or bye-law made under the Mines Act, 1952 (i.e.

subordinate legislation), or
(c) contravention of any order made under any provisions of the Mines Act, 1952 or under any regulation, rule or bye-law made under the Mines Act, 1952 (i.e. contravention of order made under any subordinate legislation under the Mines Act, 1952).

The present was not a case falling under the category (a) or (c) above. There was no order made in writing as would come within the ambit of category (c). The permission Ex.27 dated 2.1.1971 was not an "order" made under the Mines Act, 1952 or under the provisions of any subordinate legislation thereunder. Shri Bobde pointed out instances of provisions for making of such orders by reference to section 22 and 72(b) of the Mines Act, 1952 and to Regulations Nos. 65, 101, 103 and 128 of the Coal Mines Regulations 1957. Shri Bobde is entirely right in these contentions. The gist of the offence alleged in the present case is "depillaring" in contravention of the conditions in Ex.27 dated 2.1.1971 on which permission to depillar was granted. Breach of any of these conditions by itself is not punishable under Section 73 of the Mines Act, 1952."

The High Court further held in paragraph 12 as under :

"Here Shri Bobde very rightly pointed out that the ten conditions contained in the letter Ex. 27 dated 2.1.71 have to be read together as a whole and not one or two of them separately and in isolation without the context. These ten are the composite conditions on which permission to depillar is granted. Shri Bobde drew my attention to the title mentioned at the subject of the letter Ex. 27 dated 2.1.71 which in essence is "permission - to split pillars in conjunction with hydraulic sand stowing -" stowing with sand is, therefore, intended as an integral part of the operation of splitting pillars, i.e. depillaring and does not stand on its own independent basis. Shri Bobde pointed out that there is no provision in the Mines Act, 1952 or the Coal Mines Regulations 1957 under which the running of a mine with a failure to stow after depillaring is itself made an offence. The charge in the present case is in respect of breach of

regulation 100 (1), the subject of which is "Depillaring operation", in essence the charge is "Depillaring" or "splitting" in breach of the conditions on which permission to split pillars was granted vide letter Ex.27 dated 2.1.1971."

held as follows : So far as condition No.6 is concerned, the High Court

"Therefore the words "at any time" contained in condition No.6" not more than 150 meters of split galleries shall be left unstowed at any time in the whole panel" necessarily imply "during the operation of splitting", and are not indicative of a state of continuity in the mines year after the splitting is completed, as a continuing contravention punishable under Section 73 of the Mines Act, 1952, read with Regulation 100(1) of the Coal Mines Regulations 1957. The offence is, therefore, not a continuing one, it is completed as soon as splitting or dipillaring is commenced or conducted or carried out in breach of any of the conditions on which permission to depillar was granted."

Now, the issue is whether the High Court was right in coming to the conclusion that the offence was not a 'continuing offence' on the main ground that all the conditions must be read together.

In State of Bihar vs. Dev Karan (AIR 1973 SC 908) this Court had the occasion to consider the meaning of 'continuing offence' falling under Explanation (a) to Section 79 of the Act. This Court held as follows in para 5:

"Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involve a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or noncompliance occurs and recurs there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence

which takes place when an act or omission is committed once and for all."

Bearing the above principle in mind, we have to find out whether the offence committed by the respondents, in particular violation of conditions Nos. 3 and 6, could be treated as 'continuing offence' or completed offence. To appreciate this, we must also bear in mind the object and purpose of the Act. This we can get from the long title which reads "An Act to amend and consolidate the law relating to the regulation of labour and safety in mines". If we look into condition Nos.3 and 6 with the object and purpose of the Act in mind. it has to be held that these conditions are not only relatable to what was required at the commencement of dipillaring of process, but the unstowing for the required length must exist always. The expression "at any time" finding place in condition No.6 has to mean, in the context in which it has been used, "at any point of time", the effect of which is that the required length must be maintained all the time. The accomplishment of object of the Act, one of which is safety in the mines, requires taking of such a view, especially in the backdrop of repeated mine disasters which have been taking, off and on, heavy toll of lives of the miners. It may be pointed out that the word "any" has a diversity of meaning and in Black's 'Law Dictionary' it has been stated that this word may be employed to indicate "all" or "every", and its meaning will depend "upon the context and subject matter of the statute". A reference to what has been stated in Stroud's 'Judicial Dictionary' Vol.I, is revealing inasmuch as the import of the word "any" has been explained from pages 145 to 153 of the 4th Edition, a perusal of which shows it has different connotations depending primarily on the subject matter of the statute and the context of its use. A Bench of this Court in Lucknow Development Authority vs.M.K. Gupta 1994 (1) SCC 243, gave a very wide meaning to this word finding place in the section 2(o) of the Consumers Protection Act, 1986 defining "service".(See para 4).

We, therefore, hold that the aforesaid conditions have to be obeyed always, disobedience of which shall become "continuing offence," in the light of what has been stated in the decision of Dev Karan (supra). So, even if other conditions are held to be falling under completed offence, violation of condition Nos. 3 and 6 cannot be so treated as to invoke the time limit prescribed under Section 79 of the Act. Therefore, we are inclined to differ from the view taken by the High Court and hold that violation of conditions Nos. 3 and 6 are 'continuing offences' and the charge framed is not barred by limitation. Once this conclusion is reached, the plea taken by respondent Nos. 1 to 4 that they were not the concerned officers when the offence was detected, will not hold water. Consequently, the preliminary objection raised by the respondent Nos.1 to 4 cannot be sustained.

The appeal is, therefore, allowed. The matter is remanded to the Trial Court for disposal on merits in accordance with law.