

PETITIONER:
THE STATE OF BIHAR

Vs.

RESPONDENT:
THE TATA IRON STEEL CO. LTD.

DATE OF JUDGMENT 17/02/1995

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1995 AIR 1170 1995 SCC Supl. (2) 4
JT 1995 (3) 479 1995 SCALE (1) 792

ACT:

HEADNOTE:

JUDGMENT:

KULDIP SINGH, J.:

1. The Tata Iron and Steel Company Limited (the Company), respondent in the appeal herein, is primarily engaged in the manufacture of iron and steel/iron and steel materials. According to the Company, it owns captive "coking coal mines"- has also installed "coke ovenplants" within the factory premises and as such it comes within the definition of 'colliery' under the Colliery Control Order, 1945 (the Order) promulgated by the Government of India. The State of Bihar, with the prior concurrence of the Central Government, and in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, has issued an order called the Bihar Trade Articles (Licenses Unification) Order, 1984 (the Unification Order). The question for consideration in this appeal is whether the Company is a 'dealer' within the Unification Order, and as such is governed by the provisions thereunder. A Division Bench of the Patna High Court has answered the question in the negative and in favour of the Company. This appeal by the State of Bihar is against the judgment of the Patna High Court dated April 14, 1988.

2. The Company has its registered office at Bombay and its integrated steel plant at Jamshedpur. The captive coking coal mines of the Company are in the Jharia Coal Fields and at West Bokaro in the State of Bihar. The coking coal extracted and raised from the mines is beneficiated in the coal washing plants, sterilised at Jamaduba and West Bokaro and thereafter the entire production is transferred to the Company's coke oven plants at Jamshedpur for converting the same into Hard Coke meant for use in the blast furnaces. According to the Company about 85 per cent of its coal requirement is received from the captive coal mines and the remaining 15 per cent is procured indigenously or by import from abroad. It is asserted by the Company that for the purpose of steel manufacturing only metallurgical quality of

coke is used and for that purpose the coking coal, whether received from the captive coal mines or otherwise, is converted into metallurgical coke through the process of coke ovenplants.

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According to the Company inferior quality of coke such as middlings, and coal rejects produced at the Company's collieries and some of the coke fractions such as coke breeze, pearl coke, etc. produced at its oven plants which are not of metallurgical quality and not capable of being used in its steel plant that are sold and disposed of by the Company. It is stated that the disposal of such unwanted and unusable material arising in the continuous process of the integrated manufacturing operation becomes a necessity for preventing congestion in the steel plant.

3. The Supply Inspector of the State of Bihar seized six trucks, loaded with coke breeze which were sold by the company without obtaining licence as envisaged under the Unification Order. Criminal proceedings under Section 7 of the Essential Commodities Act, 1955 for violation of the Unification Order were also initiated against the Company, which was challenged by way of a writ petition before the Patna High Court. The primary contention of the Company before the High Court was that it being a colliery under the Order which was Central Government promulgation, the Unification Order issued by the State Government was not applicable. The High Court by the judgment dated November 12, 1986 dismissed the writ petition. The Company challenged the judgment of the High Court by way of special leave petition before this Court. This Court in Civil Appeal 576 of 1986 decided on December 3, 1987 set aside the judgment of the High Court and remanded the matter for fresh decision. The operative part of the order is as under:

"We are of the view that very contentious issues were involved in the matter. The aspects that required examination could not have been disposed of in the matter in which the Division Bench has dealt with it. The question as to whether the appellants are dealers, has to be examined as without the appellants being a dealer within the meaning of the 1984 Order, no liability to comply with the impugned requirements of the Order, would arise. Even Mr. Jai Narain found it difficult to ask for sustaining the impugned order as relevant aspects have not been examined. Taking all these aspects into consideration, we set aside the order of the High Court and remit the matter to it for fresh disposal on merits after hearing the parties. Ful

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opportunity should be given to the parties to place their arguments and the case should be disposed of in accordance with law. We did not intend to express any opinion on merit and if anything has been said it should be taken by way of justification for the remit."

4. On remand, the High Court heard the parties afresh and by the impugned judgment dated April 14, 1988 allowed the writ petition. The High Court came to the conclusion that the Company was a colliery and as such was governed by the provisions of the Order. The High Court reached the said conclusion on the following reasoning:

"8. As noticed above, the Company is the owner of coal mines as well as coke oven plant.

Colliery within the meaning of the definition of the Central Order not only any mine or open working where the getting of coal is the principal object of the mining, quarrying or other operations earned on therein but includes a plant for the production of coke or for the washing of coal. In view of the inclusive definition, coke oven plant and coal washeries are also collieries within the meaning of that Order.

9. Learned Standing Counsel submitted that the word 'include' in the context mean only such coke oven plant which is near the vicinity of a coal mine and shall be a colliery. This submission cannot be accepted.

The word 'include' is generally used as a word of extension and when this word is used it adds to the word or phrase a meaning which does not naturally belong to it. The word 'colliery' ordinarily will signify a coal mine, but because of the use of the word 'include' in the definition of colliery, it must be construed as comprehending not only such things as it signify according to its natural import, but also those things which the interpretation clause declares that they shall include. Thus where 'includes' has an extending force, it adds to the word or phrase a meaning which does not belong to it. Reference may be made to the South Gujarat Roofing Tiles Manufacturers Association and another vs. The State of Gujarat and another 1976 (4) SCC 601.

10. The word 'colliery' as defined in the Central Order does not envisage that coke oven plant must be near about or in the vicinity of coal mine. We may mention that coal mines and coke oven plant belonging to the Company have not been nationalised under the Coking Coal Mines (Nationalisation) Act, 1972 or the Coal Mines (Nationalisation) Act, 1973. It must, therefore, be held that the coke oven plant at Jamshedpur belonging to the Company is

a 'colliery' within the meaning of the Central Order."

The High Court further followed its earlier judgment in Black Diamond Industries Others v. Coal Controller and others, 198 B.L.T. (Reports) 127, and held as under:

"For the reasons given in Black Diamond case, it must be held that to the coke oven plant at Jamshedpur the Central Order applies and the Unification Order shall have no application."

5. In Black Diamond's case, a Division Bench of the High Court examined the provisions of the Order and also the Unification Order, and came to the conclusion that the two operated in different fields. The Bench further came to the conclusion that the Order dealt with producers of coking coal whereas the Unification Order was only applicable to those who were not the producers of coal. It would be useful to reproduce the High Court reasoning in Black Diamond's case, which is as under:

"A comparison of the different provisions of

the Orders noticed above, brings out this picture. Colliery Control order is applicable throughout India and deals with coal including coke. The provisions which are found in the Coal Control Order, Unification Order and Display Order with regard to sale, purchase, storage price, inspection, compliance of order given by different authorities under those orders and filing of returns are also provided in the Colliery Control Order. Colliery Control Order further provides for regulating production of coal which is not there in any of the Bihar Orders. Colliery Control Order is a special statute which deals with colliery which means a mine or open working where the heating of coal is the principal object of the mining, quarrying or other operations earned on therein and includes a plant for the production of coke. None of the Bihar Orders deal in colliery. The very significant difference between Colliery Control Order on one hand and the Bihar Orders on the other is that whereas the former Order specifically deals with colliery and producers of coal the latter Orders, i.e., Bihar Orders do not specifically include them but purport to deal with all dealers of coal. Respondents want us to include within the ambit of 'dealer' in Bihar Orders producers of coal also. This cannot be done.

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Firstly, Colliery Control Order deals with producers of coal and the definition of 'dealer' in Bihar Orders do not include producers of coal. Secondly, Colliery Control Order is an exhaustive Code in respect o

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Colliery. If Bihar Orders are made applicable to Colliery, then these Orders will come in conflict with Colliery Control Order. But this conflict can be avoided if it is held that Bihar Orders do not apply to Colliery. Thirdly, according to the respondents, when Colliery Control Order and Bihar Orders operate in different fields, there is no scope for holding that Bihar Orders will operate also in the field covered by Colliery Control Order.

It was urged on behalf of the respondents that in the Colliery Control Order, there is no provision for obtaining a licence. This appears to be true, but the issuance of licence under the Unification Order is meant for controlling the sale, purchase, and storage and contravention of terms and conditions of the licence has been made penal. If Colliery owners, who are the petitioners, are required to obtain licence under the Unification Order, that must be for the purpose that production sale, purchase and storage of coke may be regulated within the terms and conditions of the licence. Since the State Government cannot regulate the production, sale, purchase and storage of coke colliery owner, no licence is required to be

taken by the colliery owners under the Unification Order."

6. Learned counsel for the State of Bihar has vehemently contended that the coke oven plants of the Company having been constructed within the factory premises at Jamshedpur, it cannot be considered to be a part of the coal mine and as such cannot come within the definition of 'colliery' under the Order. To appreciate the argument, it would be useful to examine the definition of 'colliery' given under clause 2(2) of the Order which is as under:-

"'colliery' means any mine or open working where the getting of coal is the principal object of the mining, quarrying or other operations carried on therein and includes a plant for the production of coke or for the washing of coal."

7. A plain reading of the above quoted definition makes it clear that it specifically includes 'a plant for the production of coke or for the washing of coal'. The inclusive definition has been given with a purpose. Ordinarily, the coke oven plant is at a place where coking coal is converted into Hard Coke for the purposes of using the same in the industry. Coke oven plants are, therefore, set up at various places where Hard Coke is needed for the industry. Since hard coke also comes within the definition of 'coal' under the Order and is subject to control by the Central Government authorities, the coke oven plants which produce hard coke have been rightly included in the definition of 'colliery'. We agree with the above quoted reasoning given by the High Court in reaching the conclusion that the Company is a colliery under the Order.

8. The crucial question to be considered is whether a colliery which is governed by the Order can, in addition, be made to follow the provisions of the Unification Order issued by the State Government. We may, therefore, briefly examine the provisions of the Order and the Unification Order.

9. Clause 4 of the Order provides that the Central Government may fix the price at which or the maximum or the minimum price, or both, subject to which coal may be sold by colliery owners. Under Clause

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5 no colliery owner or his agent can sell and no person can purchase, coal at a price which is in excess of the price or the maximum price or below the price or the minimum price fixed under clause 4. Clause 7 lays down that every colliery owner or an allottee of coal under the Order shall, on being requested to do so, submit returns and other information in such form and within such time as may be specified in the notice or direction. Clause 8 provides that the Central Government may from time to time issue such directions as it thinks fit to any colliery owner regulating the disposal of his stocks of coal or of the expected output of coal in the colliery, during any period. Under clause 10A the Coal Controller may by order direct that any coal despatched by any colliery owner which is in transit shall be subject to such terms and conditions, if any, as the Coal Controller deems fit, be diverted and delivered to another person specified in the order. Clause 11 provides that the Central Government may issue such directions as it thinks fit to any colliery owner prohibiting or limiting the mining or production of any grade of coal. Clause 28 prohibits any person from using coal so allotted otherwise than in accordance with the conditions contained or incorporated in the order of allotment. Clause 12E provides that no person

shall acquire or purchase any coal from a colliery and no colliery owner or his agent shall despatch coal from the colliery except under the authority and in accordance with the conditions contained in a general or special authority from the Central Government. Clause 12G provides that notwithstanding anything contained in Clause 12A, 12B and 12E, any person may from September 15, 1975 without any order of allotment or authority acquire or purchase despatch or transfer hard coke produced from beehive ovens, country ovens and bye-product ovens, provided that nothing in this clause shall apply to hard coke in respect of which direction is issued by the Central Government under Clause 8 of the Order. It may be mentioned that by the notification dated July 24, 1967 the Central Government has authorized any person to acquire despatch or transfer without any order of allotment or written authority non coking coals of all grades produced in all coal fields, coking coals not required for metallurgical consumers and coal produced in Assam provided that such coal shall be consumed within India.

10. It is obvious from the provisions of the Order that it tends to regulate coal from the stage of production to the stage of consumption including price control and inspection. Under the scheme of the Order, the coking coal from various coal mines is allotted to various persons. The provisions of the Order give wide powers to the Central Government to ensure that the coal extracted from the mines is properly utilised for the benefit of the industry and other purposes. Apart from that, the provisions of the Order give wide powers to the Central Government to keep a track on the allotted coal so that the same is not misutilised.

11. The Unification order defines the coal to mean coal, coke and other derivatives including soft and hard cokes of various grades. 'Dealer' has been defined under Clause 2(e). 'Retail dealer' has been defined to mean a person engaged in the business of purchase, sale, or storage of any article specified in Schedule 1 for the purpose other than personal consumption within the storage limit fixed by the Gov-

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ernment from time to time. 'Wholesale dealer' has been defined to mean a person engaged in business of purchase, sale or storage of any article specified in Schedule 1 for the purpose other than personal consumption within the storage limit fixed by the Government from time to time. 'Coal dump holder' means a person or firm appointed by or on behalf of the Government as such who is engaged in the business of storing coal from collieries on the basis of allocation made by the Government or by any authority empowered by the State Government for sale to retail dealers. Part 11 of the Unification Order provides for issuance of licence and prohibits dealer to carry on business of purchase, sale or storage for sale of any of the trade articles mentioned in Schedule. 1, without a licence issued under the Order. Part 11 of the Unification Order imposes restrictions relating to price, stock, etc. It provides that the retail price of any trade article displayed in compliance with the provisions of the Display Order shall not exceed the retail price fixed or recommended by the Central Government or the State Government or manufacturer or distributor from time to time for that trade article. It further provides that no dealer shall sell to any person any trade article at a price higher than that specified in respect of such article in the list of prices and stocks and no dealer shall refuse to sell such article to any person at

the price specified. No dealer shall sell any trade article to any person without issuing a cash memo or bill and without keeping a duplicate copy of such memo or bill. Clause 19 of the Unification Order requires every person holding stock of trade articles mentioned in Schedule 1 and Schedule 11 to sell to the State Government or to any person or class of persons the whole or specified part of the stock at such price and in such manner as may be specified in the order. Clause 20 provides that every dealer shall furnish a return to the prescribed authority from time to time as notified. It is laid down in Clause 21 that the licensing authority may by general or special order in writing require a dealer holding stock of trade article to sell article on permits issued by the licensing authority. In Part IV there are usual powers to call for information and issue directions to the dealers.

12. The various provisions of the Unification Order show that the purpose of the said order is to make available scheduled articles to the public at fair price and without any holding of stock by the dealers. The object of the Unification Order in a nutshell is to make available the essential commodities to the public at large.

13. Having minutely examined the provisions of the Order and the Unification Order, we have no hesitation in concurring with the finding of the Patna High Court in Black Diamond's case that the two operate in different fields. There is hardly any overlapping between the two. The learned counsel for the Company has however invited our attention to clause 15 (display of price), clause 20 (furnishing of returns) clause 21 (sale on permits) and clause 25 (power to issue directions to the dealer) of the Unification Order which according to the learned counsel are covered by the provisions of the Order. We do not agree with the learned counsel. As mentioned above, the provisions of the Order issued by the Central Government are directed for the protection of the allotted/ allocated coal. The Order operates from the stage when the coal is extracted from the mines and continues to regulate its jour-
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ney till it leaves the colliery and is brought in the open market for sale. The Unification Order, on the other hand, starts operating at a stage when the coal is exposed for open sale in the market. The two operates in entirely different fields. The display of prices, furnishing of returns, sale on permits, power to issue directions to dealers, under the two Control Orders are for entirely different purposes and they operate in different fields. We, therefore, do not agree with the judgment of the Patna High Court in Black Diamond's case that the two Control Orders are likely to conflict with each other in their operation. Examined from another angle, the Central Government by the Notification dated July 27, 1967 has permitted free sale of non metallurgical coal provided it is consumed in India. When the said coal is sold in open market in the State of Bihar the provisions of the Unification Order, which are meant to protect the interest of the consumers, are squarely attracted and are to be followed even by a colliery which falls within the definition of 'Dealer' under the said Order.

14. We may mention that the Control Orders emanate from the same source. The Order has been issued by the Central Government, whereas the Unification Order has been issued by the State Government of Bihar as a delegate of the Central Government under the Essential Commodities Act, 1955 and further, the Unification Order has been issued with the

prior approval of the Central Government.

15. We, therefore, see no justification for the respondent-Company for not complying with the provisions of the Unification Order. The respondent-Company despite being a colliery is bound by the provisions of the Unification Order if it is found to be a dealer under the said Order.

16. The expression 'dealer' has been defined under clause 2(e) of the Unification Order which is as under:-

"'dealer' means a person, a firm, an association of persons or a co-operative society other than a National and State level Co-operative Society, engage in the business of purchase, sale or storage for sale of any trade article whether or not in conjunction with any other business and includes his representative or agent but does not include-

- (i) a person who holds or is in possession of agriculture land under any tenure or any capacity and on which he raises or has raised crop of foodgrains, oilseeds or whole pulses;
- (ii) a manufacturer of sugar;
- (iii) a producer of pulses and edible oil. "

Patna High Court in Black Diamond's case came to the conclusion that the colliery being a producer of coal cannot come within the definition of 'dealer' under the Unification Order. We do not agree with the conclusion of the High Court which is based on no reasoning. It is the admitted case of the Company that they sell coal in the open market which has no metallurgical quality. In the written submissions filed on behalf of the Company by M/s. J.B. Dadachanji & Co., in paragraph 18 the percentage of clean coal and non metallurgical coal has been given as under:

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"% of the product to the total input

	Jamadoba	West Bokaro
Clean Coal	62/65%	38/40%
Middlings	19/13%	38/40%
Rejects	12/14%	8/10%
Slurry	7/8%	10/12%
Tailings		

Clean coal, the only prime quality product of metallurgical quality is meant for manufacture of BP hard coke, All the remaining three are secondary products of the Washeries which are non-metallurgical quality."

There is thus no doubt that the quantity of non-metallurgical coal sold by the Company is not negligible. In any case, the Company is regularly selling non-metallurgical coal in the open market and as such it cannot be said that it is not engaged in the business of sale or storage for sale of non metallurgical coal. We have no hesitation in holding that the Company is a dealer under the Unification Order.

17. We, therefore, allow the appeal, set aside the impugned judgment of the Patna High Court and dismiss the writ petition filed by the Company before the High Court. We further hold that the Division Bench Judgment of the Patna High Court in Black Diamond's case does not lay down correct law to the extent indicated by us above. The appellant shall be entitled to its costs, which we quantify as Rs.20,000/-.

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