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Analysis on Banwari Lal v. State of Bihar



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An Analysis on Banwari Lal v. State of Bihar¹

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FACTS:

1- On 20.02.1958 an accident took place in the Central Bhowra Colliery in Dhanbad in Bihar in which 23 people lost their life. An enquiry was held U/S 24 of the Mines Act, 1952², which saw the reasons due to which the collision happened and the same was published. A complaint was filed by the Regional Inspector of the Mines, by the command of the Chief in the court of the Sub-Divisional Officer against the Appellant U/S 74 of the Mines Act for the contravention for the regulation of 107 and 127 of the Coal Mines Regulations, 1957. This colliery belonged to a private company named M/S Central Bhowra Colliery Co. Private Limited. And the Appellant in this

case is the shareholder and the director of the Company. After the Officer took cognizance and issued processes against the Appellant, he then filed an application to the Patna High Court U/A 226 for issuing a proper writ and to quash the criminal proceeding against him. His application was dismissed for quashing and it was against the order of dismissal of the court.

- 2- Grounds which were used for the dismissal were:
- a- Section 76 of the Mines Act, 1952 i.e he was not the owner but a shareholder and director.
 - b- Secondly these invalidly framed against section 59(3)

The above two mentioned grounds were urged.

- 3- The first ground which was used had assumed the word “any one” which according to section 76 means any one of the director or shareholder which lead to the interpretation that “any one” should be replaced with “everyone” thus

¹ Air 1961 sc 849

² the mines act,1923

- under 76 now everyone would be liable which would lead to no violation of article 14.
- 4- Section 59 gives the power to the Government to make regulations while Section 58 gives power to the Government to make Rules which are consistent with the Act for any purposes mentioned.
 - 5- There was no dispute earlier when the regulations were framed but the question to whether the Omission whether to make these rules invalid was taken up again and again by the courts it is very difficult to come to any conclusion whether any such rules is mandatory or not because we cannot figure out the consequences beforehand.
 - 6- It is correctly stated that before publishing any rules or regulations they are first send to the concern authorities to be checked then it gets published.
 - 7- Language plays a very important role as it helps to determine whether the requirement given is either directed to follow or Mandatory to follow.
 - 8- The view of Legislature is that the Mining Boards should have been given an opportunity to look into what rules and regulations have been formed and then express their opinions over it before they get finalized as they are the one who would know better than the any authority as to what they face regularly etc.
 - 9- Now let's understand this matter from another perspective: what will happen to the public welfare if Section 59 would invalidate a regulation, emergencies would arise just to protect the citizens these rules and regulations are framed as soon as it can be and to avoid the time lost and are shared with the Authorities so that they would approve it.
 - 10- After all the Examination which is done by the Mining Board related to the Rule and Regulations formed by the Legislature are now validated.
 - 11- Adding more to this that if some changes has been done by the Legislature without consulting the Authorities concerned and have handled the situation well so the regulation so made shall not remain in force for more than 2 years which by the amendment in 1959 had made it to 1 year.
 - 12- Importance was given on the Respondent's fact which stated that Section 59 does not require the that the regulation must have the concurrence of the Mining Boards

and State of UP v. Manbodhan Lal Srivastava pointed out that “the requirement of the consultation with the commission does not extend to making the advice of the commission on these matter binding to the government” it is true that the court did not give enough weight to this circumstance but in others circumstances they had different views and opinions.

- 13- In this present case there is no scope of applying the same principle here of the directory nature of section 59(3) as it said above that inconvenience which has been caused by section 59(3) is removed by the provisions of section 60 and on the other hand to hold the regulations which may be made valid without following the procedure is also likely to be harmful to the public interest.

The above reasons are enough to make sure that the provisions laid down in section 59(3) are compulsory

- 14- Also to take in consideration is that when these new rules and regulations were formed and compiled with the Coal Mines

Regulations,1957³ were they discussed with the Mines Boards. It was said on the behalf of the Respondent that the Mining Boards U/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.

- 15- In the conditions, the best possible course, as we would like to think, and then to coordinate that the criminal procedures pending in the Court of the Sub-Divisional Justice be discarded by him or some other Judge to whom the case might be moved in agreement with lawyer and after choosing the question whether there was discussion with Mining Sheets comprised under section 10 of the Mines Act⁴, preceding the guidelines were framed and, if along these lines, regardless of whether such discussion added up to adequate consistence with section 59, If his decision is that there has not been consistence with the arrangements of section 59 the guidelines must be held to be invalid and the charged would be qualified for a quittance; if, then again, he holds that there has

³ Coal Mines Regulations,1957

⁴ The Mines Act,1923

been adequate consistence with the arrangements of Section 59 he ought to discard the case in the wake of arriving at a resolution on the proof as respects the charges made against the appealing party in the request of grievance.

16- On the above reading of the Judgment what I infer is that if any changes or new Rules or Regulations need to be made it should be firstly taken into consideration that the Legislature first need to get in touch with the concern authority and they should discuss with them then they should express their views and opinions and not to express their own opinions and views on the authorities because it can be seen that Legislature being the Bigger and Higher Authority they might not be questioned by any-other Authority with whom they are discussing, Secondly even if the Legislature is making any changes and if those changes are not harming the Public then those changes can be made permanent by having a discussion with the Authorities who are concerned.