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Court : Jharkhand

Decided On : Feb-25-2004

Reported in : IV(2004)BC395; 2004(2)BLJR1342; [2004(2)JCR545(Jhr)]; [2005]63SCL167(Jhar)

Judge : P.K. Balasubramanian, C.J. and; Tapen Sen, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985; Industrial Disputes Act; [Constitution of India](#) - Article 226

Appeal No. : WP (S) Nos. 3224, 3233, 3234, 3240 and 4326 of 2003

Appellant : Madhusudan Tiwari, ;satyendra Kumar and Ashok Kumar Singh;fertilizer Factory Workers Union and anr.

Respondent : The Project and Development India Ltd. and ors.;union of India (Uoi) and ors.

Advocate for Def. : Ram Balak Mahto, K.B. Sinha, Sr. Adv. and; Amitabh, Adv.,;

Advocate for Pet/Ap. : Dhananjay Kumar Dubey,; Neelam Kumari,; Ajay Kumar Trive

Disposition : Petition dismissed

Judgement :

ORDER

1. These writ petitions are by some individuals employed in the Project and Development India Ltd. Sindri and some Unions representing the workmen.
2. The essential challenge in these writ petitions is to the scheme for revival of the company to be examined by the Board for Industrial and Financial Reconstruction (BIFR). Admittedly, the company had invoked the Sick Industrial Companies (Special Provisions) Act, 1985 and it was referred to the BIFR in the year, 1992. With the Central Government approval, certain steps were taken as part of the revival package. The approval of BIFR is still awaited. These writ petitions essentially seek to challenge the mode adopted for proceeding with the scheme before the BIFR.
3. Earlier, the claim was sought to be challenged in WP (PIL) No. 4946 of 2003. This Court by judgment dated 30.1.2004, dismissed the writ petition. After referring to the decision of the Supreme Court in *Balco Employees Union (Regd.) v. Union of India and Ors.*, 2002 (1) JCR 339 (SC): (2002) 2 SCC 333, this Court held :--

'It, is seen that the decision on the closure of the Research Wing which is the main target of attack by the petitioner, was approved by the Central Government after taking note of the entire circumstances. The company itself had taken that decision after weighing the pros and cons, here again, as a matter of policy, and ensuring the economic viability of the company. On the materials it is seen that steps have been taken carefully and after considering all the relevant aspects. There is no arbitrariness or unreasonableness shown in the decision making process.'
4. Thus, on examining the materials, this Court had found that the scheme which was sought to be implemented, was not vitiated by any bias, justifying interference by this Court.
5. As part of the scheme, it was found that 1272 employees were surplus. The scheme also contained a provision for their retirement or retrenchment. Out of those, 1026 workmen, who opted for Voluntary Retirement under the scheme, were released. Notice had been given to 154 employees, who had not opted under the Voluntary Retirement Scheme, but who were found surplus in view of the

closure of the E and C Division as well as R and D Division of the company at Sindri. They were, therefore, given notice under the Voluntary Separation Scheme with an alternative of retrenching them in terms of the Industrial Disputes Act. It is that stage, that the writ petitions are filed pleading that such notice ought not to have been given. Their further plea is that some of the employees who were transferred to Baroda and NOIDA Units, even after transfer, have been permitted to continue and complete certain works at Sindri and this clearly indicates that all was not well with the implementation of the scheme.

6. The counter affidavits give details of the circumstances under which the company had gone before BIFR and also clearly setting out that the whole exercise for identifying the surplus staff has been done by a duly constituted high power committee at Unit level and their recommendations have been submitted for approval of a Corporate Level Committee and finally to the Chairman-cum-Managing Director of the company. It is further stated that the manpower requirement of the company has been minutely evaluated and the employees selection was based on the required nature of the job, individual experience, capability and their expertise in the process of reconstructing of the company.

7. There is no material on the basis of which we could come to a conclusion that the exercise undertaken is vitiated by malafides. In fact, no such case was attempted to be put forward, it is also seen that various steps have been taken in furtherance of the attempt to provide facilities as approved by the Central Government and the decision was taken as a matter of Policy in view of the circumstances in which the company was placed. As we indicated in our judgment in WPC 4946 of 2000, we do not find any jurisdiction in interfering in these writ petitions, especially in the context of the facts stated in the counter affidavit. Of course, learned counsel for the respondent- company also relied on the decisions of the Supreme Court in *Federation of Railway Officers Association and Ors. v. Union of India*, (2003) 4 SCC 289, and *Union of India and Anr. v. International Trading Co. and Anr.*, (2003) 5 SCC 437, in support of his contention that policy decisions taken cannot be interfered with by the Court in a normal circumstances. It is also clear from the facts that those who are offered the Voluntary Separation Scheme, are those who have been identified as surplus and there is no material

on record to show that they are not covered by that scheme. It is seen that one of the writ petitions is filed by two unions and four of them are filed by the individuals. WP (S) 4326 of 2003 is seen to be filed by 27 employees. We may notice that whether these are part of the staff, found as surplus by the appropriate committee, is not revealed. Obviously, if the petitioners have any grievance in terms of the Industrial Disputes Act, it is for them to move the authority under the Act. If they have got any grievance, which they are legally entitled to put forward before the BIFR, obviously they can do that as well. This aspect also cannot be forgotten while dealing with these writ petitions.

7. We are satisfied that no interference is called for. We dismiss these writ petitions.

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