

State of Jharkhand Vs. the Union of India (Uoi) and ors.

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Court : Jharkhand

Decided On : Sep-25-2007

Reported in : [2008(1)JCR246(Jhr)]

Judge : M. Karpaga Vinayagam, C.J. and; Narendra Nath Tiwari, J.

Appellant : State of Jharkhand

Respondent : The Union of India (Uoi) and ors.

Disposition : Application rejected

Judgement :

Narendra Nath Tiwari, J.

1. All the above interlocutory applications have been filed in the midst of the hearing of the above-mentioned writ 'petitions with the same prayer based on similar facts. Parties are also common and as such with the consent of the parties, these applications have been heard together and are being disposed of by this common order.

2. M/s. Steel Authority of India Ltd. (SAIL)-4th Respondent in the said writ petitions is the applicant in all the interlocutory applications. The applicant has raised objection regarding maintainability of the writ petitions on the ground that clearance for filing these petitions has not been obtained from the Committee, to

be constituted in view of the decision of Hon'ble Supreme Court in Oil and Natural Gas Corporation Ltd. v. City and Industrial Development Corporation, Maharashtra and Ors.-Civil Appeal No. 3143 of 2007.

3. The writ petitions have been filed by the State of Jharkhand challenging the legality/validity of the final orders of the Mines Tribunal passed in the revision application filed by the Indian Iron & Steel Company (IISCO)- 2nd Respondent, whereby the State Government has been directed to consider the applications for renewal of mining leases relating to iron ore and manganese ore in different villages of West Singhbhum district of Jharkhand, which were earlier rejected by the; State, Government.

4. It has been contended on behalf of the 4th Respondent-applicant that the parties to these writ petitions happen to be Central Government, State Government and Public Sector Undertakings. In a dispute between the Union of India, State Government, Public Sector Undertakings and different departments of the Government, the same has to be first referred to a Committee to sort out the differences in view of the judgment of the Supreme Court in Oil and Natural Gas Corporation Ltd. (Supra). Invoking writ jurisdiction without the clearance of Committee is against the basic concept of law and is impermissible.

5. Learned Counsel for the applicant has also relied on a decision of the Supreme Court in the case of Chief Conservator of Forests, Government of A.P. v. Collector and Ors. reported in : [2003]2SCR180 and referred to Paragraph-14 of the said judgment, which reads thus:

14. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public Interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act

in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also, contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such letters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and the Union of India, this Court in *Oil and Natural Gas Commission v. CCE* ' called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission v. CCE 2* this Court directed the Central Government to set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India. Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

6. Referring to the said paragraph of the decision, of the Supreme Court, it has been contended that before approaching the Committee and getting clearance, the writ petitioner cannot invoke extra ordinary jurisdiction of this Court and even at this stage, the matter has to be referred to the Committee. The applicant on the said ground insisted for decision on the said preliminary objection.

7. The writ petitioner, on the other hand, sharply refuted the applicant's contentions and submitted that the 4th Respondent-applicant has no locus standi in the matter as the controversies regarding renewal of mining leases are in between the State of Jharkhand (writ petitioner) and the IISCO-2nd Respondent.

8. It has been further contended that:

(i) The 4th Respondent-applicant claims to be the transferee of the lease, pursuant to the merger and amalgamation of IISCO into SAIL. No such transfer of lease is permissible in view of the provisions of Rule 37(1) of the Mineral Concession Rules 1960 (hereinafter to be referred as 'MC Rules 1960'), which was framed under Miners and Minerals (Development & Regulation) Act, 1957 (hereinafter to be referred as 'MA' DR Act'). Any such transfer must be with the previous consent of the State Government, in writing, but no such approval of the Government, as required under the provision of the MMDR Act and MC Rules: 1960, had. been taken. Further the scheme of the arrangement, sanctioned under Sections 391 and 394 of the Companies Act, 1956 for the amalgamation of IISCO into the SAIL, postulates for necessary consent of the Government for transfer of the mining lease. The said sanctioned scheme also provided the deadline i.e. 31st March, 2007 by which the consent was to be obtained failing which the scheme itself became null and void and IISCO/SAIL has no locus standi to obtain the renewal of the lease, in question.

(ii) Several attempts were made for settlement and negotiations between the parties and meetings were held, but the controversies could not be settled. On that ground several adjournments were taken in the writ petitions by the 4th Respondent-applicant. Hearing of the writ petitions was adjourned on 22.8.2006, 13.9.2006, 11.10. 2006, 8.11.2006, 23.11.2006, 19.12.2007, 10.142007, 7.2.2007, 13.3.2007,13.6.2007 and 2.7.2007.

(iii) None of the decisions referred to by the 4th Respondent- applicant sought to impinge Upon the constitutional writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

(iv) The decision of the Hon'ble Supreme Court in Oil and Natural Gas Corporation Ltd. (Supra) relates to inter-departmental disputes i.e. between two departments/ministries of the same Government or between the Central and one of its Public Sector Undertakings (P.S.U.s.) or between the State Government and one of its Public Sector Undertakings or between two nationalized banks or between a Central Government P.S.U.s. and a State Government P.S.U.s. None of them is applicable to the facts of this case, which raises the issue of power,

jurisdiction and the authority exercised by the Mines Tribunal in its revisional jurisdiction, provided by statute. The prayer, as such, is wholly misconceived and not maintainable.

9. Mr. J. Dhankar, learned Senior Counsel, appearing on behalf of the 4th Respondent-applicant, has strenuously argued and submitted as follows:

(i) The writ petitions have been filed by the State of Jharkhand assailing the order dated 9th November, 2005 passed by the Mining Tribunal while exercising the power under Section 30 of the MMDR Act read with Rule 54 of the MC Rules 1960.

(ii) The Mining Tribunal while passing the aforesaid order did not approve the order dated 15th December, 2004 whereby the State of Jharkhand had declined renewal of lease granted in favour of IISCO, now merged into SAIL.

(iii) The State of Jharkhand is the writ petitioner and the respondents are instrumentalities of the State within the meaning of Article 12 of the Constitution of India. Thus, the dispute is inter se between the State and its instrumentalities.

(iv) Such being the case, the dispute is required to be referred to a High Power Committee as ruled by the Apex Court in Oil and Natural Gas Corporation Ltd. case (Supra), The writ petitions are, thus, not maintainable.

10. Learned Counsel referred to and relied on the decisions of the Hon'ble Supreme Court in ONGC v. CCE (1992) Suppl. 2 SCC 432, ONGC v. CCE (1995) Suppl. 4 SCC 541, CCE v. Jessop & Co. (1999) 9 SCC 181, Chief Conservator of Forest v. Collector : [2003]2SCR180 , Mahanagar Telephone Nigam Ltd. v. Chairman, CBDT : [2004]267ITR647(SC) , ONGC v. CCE : 1994(70)ELT45(SC) , Punjab Sind Bank v. Allahabad Bank and Ors. : 2006(199)ELT3(SC) and Oil and Natural Gas Corporation Ltd. v. City & Industrial Development Corporation, Maharashtra and Ors. Civil Appeal No. 3143 of 2007.

11. Mr. M.S. Ganesh, learned Senior Counsel, appearing on behalf of the writ petitioner, on the other hand, submitted that none of the decisions of the Supreme Court, referred to above, applies to the facts of the instant case. The said

decisions are not relevant to decide the issues relating to power, jurisdiction and the authority exercised by the State at first instance and the Central Government as revisional authority under the statute. Learned Counsel submitted that the instant cases arise out of mining leases, governed by the stipulated terms and conditions as well as by the provisions of the MMDR Act and MC Rules 1960. Several issues of law have been raised in the writ petitions, which can be adjudicated upon and decided by this Court and not by any Committee.

12. The writ petitions have been filed against the order of the Mining Tribunal, which is a statutory authority under Section 30 of the MMDR Act and it is not like any other dispute to be referred, to a Committee.

13. After due consideration of the rival contentions of the parties and the materials placed on record as also the decisions referred to and relied on by the 4th Respondent-applicant, we find much substance in the submissions made by the learned Counsel for the writ petitioner. In the writ petitions, the order dated 9th November, 2005 passed by the Mining Tribunal has been challenged. The said order has been passed by the Mining Tribunal in exercise of its statutory revisional power under Section 30 of the MMDR Act read with Rule 54 of the MC Rules 1960.

14. We are unable to accept the contention of the 4th Respondent-applicant that a Committee would sit over the order of the Mining Tribunal and decide its propriety and legality.

15. After careful perusal of the decisions of the Supreme Court referred to and relied upon by the 4th Respondent-applicant, we do not find any similarity in the facts situation of any of those cases with the cases in hand. Further, we do not find any bar created by any of the decisions to entertain the writ petitions in exercise of writ jurisdiction under Article 226 and 227 of the Constitution of India.

16. It is relevant to mention here that number of adjournments were sought for and allowed on the ground that the matter is being discussed in high-level meetings and there is a chance of negotiation and settlement between the parties.

17. When the writ petitions were ultimately taken up for hearing on 8th August, 2007, learned: counsel appearing on behalf of the 4th Respondent-applicant again submitted that there is a chance of negotiation and settlement between the parties, which was vehemently refuted by the learned Counsel appearing on behalf of the writ petitioner. The matter was thus heard on that date.

18. The matter was further taken up on 22nd August, 2007. The applicants filed these interlocutory applications at that stage, raising the preliminary issue of maintainability of the writ petitions on the aforesaid grounds.

19. We find no justification for filing these interlocutory applications at this stage and also find no force in the contention of the learned Counsel appearing on behalf the 4th Respondent-applicant that the issue raised in the writ petitions can be sorted out and decided by a Committee. In our view, a Committee cannot decide the legal issues raised in these writ petitions and cannot review/set aside or alter the order passed by the Mines Tribunal in its statutory revisionai jurisdiction, as sought for in these writ petitions.

20. We, therefore, find no merit in these interlocutory applications, which are, accordingly, rejected.