

(1984) 05 CAL CK 0026
In the Calcutta High Court
Case No : A.F.O.O. Tender No. 1412 of 1984

Bharat Coking Coal Limited	Vs	APPELLANT
Aman Minerals Corporation and Others		RESPONDENT

Date of Decision : 11-05-1984

Acts Referred:

Constitution of India, 1950 — Article 225, 226

Citation : AIR 1985 Cal 448

Hon'ble Judges : Umesh Chandra Banerjee, J; Manash Nath Roy, J

Bench : Division Bench

Advocate : Gautam Chakraborty, Samar Banerjee and Debashis Roy, for the Appellant; Sanjoy Bhattacharjee, for the Respondent

Judgement

Umesh Chandra Banerjee, J.—This application arises out of an appeal against an order passed by A. K. Janah, J. on 12-4-1984, whereby the learned Judge was pleased to issue a Rule and an ex parte interim order in terms of prayer (f) of the petition which is to the following effect :

"(f) Injunction do issue restraining the respondents each one of them by themselves and/or their agents, servants and/or subordinates from giving any effect or further effect and/or taking any step or further steps and/or acting or further acting and/or continue to act on the basis of the impugned orders dt. 28/30-6-83, 16-3-84 and 7-4-84 fully contained in Annexures "I" & "L" collectively hereof or withholding any payment or continue to continue to withhold any payment out of the transport bill for the period from 1-12-1980 till 1984 and/or till date and further restraining the respondents from effecting any deduction or giving any effect or further effect to the order of deduction if any and/or the security money and/or the bills for transportation work for period from 1-12-1980 till 1984 or till date on the basis of the said Annexures "I" and "L" and/or in pursuance thereto or otherwise in any manner and further directing the respondents to release and pass bills and make payments of the security money and bills in no time."

2. Mr. Gautam Chakraborty, appearing in support of this application, contended that the Writ-petitioners are suppliers of sand to the Bharat Coking Coal Limited and in terms of a written agreement, have been supplying sand to Bharat Coking Coal Ltd. There was discrepancy in the measurements given by the Writ-petitioners and as such certain amounts were being withheld until finalisation of such discrepancy. Mr. Chakraborty drew our attention to the arbitration clause in the agreement, which specifically provides that all disputes and differences which may arise at any time between the parties or their legal representatives, arising out of the said agreement or its subject-matter or conditions thereof, shall be referred to the sole arbitration of CME(P), BCCL concerned, whose decision thereon shall be final and binding. Mr. Chakraborty contended that in the midst of factual disputes, the interim order of the nature as appears from prayer (f) should not have been granted and in any event, the ex parte order ought not to have been passed in the facts of this case. It was further contended that the entire cause of action has arisen at Dhanbad, outside the territorial jurisdiction of this Court and as such, this Court has also no jurisdiction to entertain this application.

3. Mr. Sanjoy Bhattacharya, appearing in favour of the Writ-petitioners and the respondents in this appeal, however, contended that the Writ-petitioners are within their rights to move this High Court under Article 226 ex parte and no complaint can be made against the order passed by the learned trial Judge. The conduct of the appellant-petitioner, in withholding the dues of the Writ-petitioners was reprehensible and the proper remedy for the Writ-petitioners would be under Article 226 of the Constitution. In this context, Mr. Bhattacharya placed reliance on the decision of Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and contended that the Writ Court is the proper forum to ventilate the grievances of the present nature.

4. In regard to the question of jurisdiction, Mr. Bhattacharya drew our attention to the averments made in para 37(a) of the writ petition, which is to the following effect :--

"37(a). That Bharat Coking Coal Ltd., has a large office at No. 6, Lyons Range, Calcutta. The said Bharat Coking Coal Ltd., has been carrying on business from No. 6, Lyons Range, Calcutta. The Managing Director, Director Commercial, Director Finance and all other officers of Bharat Coking Coal Ltd., have their office and place of Business at No. 6, Lyons Range, Calcutta. The Coal India Ltd., has got its Registered Office in Calcutta as mentioned in the cause title. Under its Memorandum of Association, Bharat Coking Coal Ltd., is obliged to work according to and carry out the directions of Coal India Ltd. The policy regarding issue of tender, general terms and conditions and all other matters are decided by Coal India Ltd., in consultation with the Law Office of Bharat Coking Coal Ltd., at Calcutta. Your petitioner has its place of business at Calcutta by reason of the impugned decision and/or order, your petitioner has suffered loss at Calcutta and

such loss is being felt within the jurisdiction of this Hon"ble Court. For the reasons enumerated hereinbefore, your petitioners state that this Hon"ble Court has jurisdiction to entertain, try and determine this application."

5. Since however, we are concerned at this stage, whether the learned trial Judge ought to have passed an interim order ex parte or not, it is not necessary for us to go into the matter as to whether this Court has, in any event, jurisdiction to entertain or try or determine the application under Article 226, pending disposal of the Rule. In the Rule that point is of some consequence, but not at this stage. In regard to the question of jurisdiction. Mr. Bhattacharya cited the decision reported in (1983) 2 Cal LJ 93 corresponding to Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, . as also the decision reported in Industrial Fuel Marketing Co. Vs. Union of India (UOI), . But as we have observed earlier that the question of jurisdiction at this stage need not be gone into, the question of jurisdiction is thus left open. Mr. Bhattacharya further contended that the Rules framed by this Court in regard to the application under Article 226 of the Constitution ought not be considered since the said Rules are no longer valid and binding. Mr. Bhattacharya contended that the Rules were framed immediately after the Forty-second Amendment and by reasons of the subsequent Forty-fourth Amendment, the Rules of this Court, framed by the Full Court stand superseded. Those Rules, however, have not been challenged in the writ petition and as such we are not called upon to decide the matter and as such we are not deciding the same. But since certain submissions have been made, we record our observations that the Rules, unless superseded, amended or abrogated, continue to be in force since the same have duly been framed by the Full Court of this Court.

6. The nature of the order under appeal suggests that the learned Judge in effect has disposed of the mam Rule by directing refund of the money without giving an opportunity of hearing to the respondent-Corporation. In the facts and circumstances of the present case, we are of the view, however, that ex parte order of the present nature ought not to have been passed by the learned Judge and the learned Judge was not right in granting interim relief in the terms in which it was granted ex parte.

7. In that view of the matter, we vacate the order passed by the learned Judge on 12-4-84, in so far as prayer (f) above is concerned. Let the Rule be decided on its merits. It is to be recorded that we are not expressing any opinion in regard to the merits of the dispute and that will be adjudicated at the time of hearing of the Rule. The interim order is thus vacated. We, however, wish to make it clear that vacating of the interim order will not disentitle the writ petitioners from seeking interlocutory relief pending disposal of the Rule, upon prior notice in writing to the respondents 4, 5, 6, 7, 8 and 9.

8. The application is thus disposed of.

9. By consent of the parties, the appeal is treated as on day's list and is

disposed of accordingly.

10. There will be no order for costs.

11. Oral prayer for stay made, but refused.

12. The copy of the writ petition, filed in Court today, be kept on the record.

13. This order will govern the application dt. 9-5-1984 in F. M. A. T. 1401 of 1984 (Bharat Coking Coal Ltd. v NEFCO.)

M.N. Roy, J.

14. I agree.