
(2014) 01 JH CK 0053
In the Jharkhand High Court
Case No : W.P. (PIL) No. 5608 of 2011

Captain Rabindra Nath Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2014) 3 AJR 24 : (2014) 1 JLJR 624

Hon'ble Judges : R. Banumathi, C.J; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Abhijeet Kumar Singh, Advocate for the Appellant; Amit Kumar Das, Advocate for the C.C.L., Md. Mokhtar Khan, ASGI for the UOI and Mr. Rohit Ranjan Sinha, Pandey Neeraj Rai and Mrs. Soumya Snahil Pandey, Advocate for the Respondent

Judgement

1. The petitioner is an ex-servicemen and was acting captain EC50073, REGT or CORPS Maratha (MLI), Maratha Light Infantry and is alleged to have devoted himself for the benefit of ex-servicemen. This "Public Interest Litigation" has been filed for a direction upon the respondent No. 3 (Central Coalfields Ltd.) to release the dues of various ex-servicemen companies towards the coal transportation made by them in the coal field areas of CCL for the period of ten years to respondent No. 4-Director General, Re-settlement, New Delhi (D.G.R.) and for distributing the same to the ex-servicemen companies namely. Randev Associates Pvt. Ltd., Patriot transport Pvt. Ltd., Rajdhani Carrier Pvt. Ltd., Annapurna Coal Carrier Pvt. Ltd., Pushak Transport Company (India) Pvt. Ltd., Vijyant Transport company (India) Pvt. Ltd., Dolphin Transport company Pvt. Ltd., Adarsh Bulk carriers Pvt. Ltd., Jaguar transport company Pvt. Ltd., Maurya Transport Pvt. Ltd., Jawan transport company Pvt. Ltd., ESSEM Transporter & Contractor Private Limited, for the benefit of ex-servicemen, their widow and children and not to respondents Nos. 5 to 16, who, according to the petitioner, have no concern with the Defence Department. In order to re-habilitate the ex-servicemen, their widows, children, there was a Memorandum of Understanding

(MoU) between DGR, Ministry of Defence, Ministry of Coal, Coal India Ltd. and Coal Subsidiary under a policy of formation and running ex-servicemen coal transportation companies. The scheme to raise ex-servicemen (ESM) coal transportation companies were formulated between erstwhile Ministry of Energy and Ministry of defence in the year 1979 with the aim of having union free captive transport companies in coal subsidiaries and providing an opportunity to ex-servicemen for resettlement. The said scheme has been successful and mutually beneficial to both the parties. The procedure adopted is that on request received from C.I.L. or any of its subsidiaries, the DGR will have suitable and eligible ESM selected to form a private limited company. After a feasibility study by the sponsoring Directors, the company will be formed and registered with the Registrar of Companies as Private Limited Company. The Memorandum of Article of Association will be approved by the DGR and it will be responsibility of the DGR to ensure that all individuals forming or participating in the private limited company are only ESM/widows/dependents and they are suitable and financial sound.

2. The grievance of the petitioner is that object of the scheme was to raise ex-servicemen coal transportation companies with the dual purpose of having union free captive transport companies in coal subsidiary companies and for providing re-settlement opportunity to ex-servicemen but that after sometime, ex-servicemen companies were hijacked by the private/civilian transporters working in the job of transportation of coal bearing areas of CCL and private individuals became the Directors of Ex-servicemen companies violating the terms of Memorandum of Understanding made between the Ministry of Defence, Ministry of Coal and others. Learned counsel for the petitioner submitted that after lapse of ten years, dispute arose between the companies, as a result of which arbitrators were appointed in view of Clause (3) of the General Terms and Conditions of the Contract and arbitrators gave their awards in various cases and the awards passed are under challenge before the Sub-Judge, Ranchi. According to the petitioner the ex-servicemen companies are hijacked by the private/civilian transporters and alleged that respondent Nos. 5 to 16 were never in service of defence department. Hence, the petitioner seeks direction upon respondent No. 3 to release the fund to the above said ex-servicemen companies through DGR.

3. Learned counsel appearing for the CCL submitted that management entered into MoU with ex-servicemen companies as per the eligibility criteria and awarded the work as per eligibility criteria for the ex-servicemen as per the guidelines of DGR. Learned counsel further submitted that in view of the dispute raised by the ex-servicemen companies regarding payment of dues matters were referred to the arbitrator and awards were passed by the arbitrators and the same are under challenge before Sub-Judge, Ranchi and also before the High Court. It was submitted that since the matters are sub judiced before the competent Court, the "Public Interest Litigation" filed by the petitioner seeking direction for payment is not maintainable.

4. We have heard Mr. Abhijeet Kumar Singh learned counsel appearing for the petitioner and Mr. Amit Kumar Das appearing for the C.C.L. and also counsel appearing for the interveners in Interlocutory Applications, being I.A. Nos. 58 of 2014 and 344 of 2014.

5. We have carefully considered the submissions and the materials on record. It is not in dispute that the C.C.L. had entered into MoU with the above ESM transport companies. It is the contention of the CCL that disputes were raised and the same was referred for arbitration before arbitrators, who passed the awards and the said awards are under challenge before the Sub-Judge-I, Ranchi. Annexure-3 filed along with the writ petition contains the details of arbitration viz. names of the parties, name of the arbitrator, awarded amount and also the subject of dispute between the parties. The awards passed by the arbitrator are under challenge before the sub-judge-I, Ranchi. It was also pointed out that as against the order passed by the Sub-Judge I, Ranchi u/s 34 of the Arbitration & Conciliation Act, 1996, in some of the matters. Arbitration Appeals are also filed in the High Court, which are pending. When the matters are sub judice pending before the competent court, the petitioner cannot seek for direction to release the amount to the companies through DGR. Therefore, the petitioner is not justified in filing the "Public Interest Litigation" seeking direction upon the respondents to release the amount. Hence, the writ petition is liable to be dismissed with cost. Consequently all the Interlocutory Applications, being I.A. Nos. 58 of 2014 and 344 of 2014, are dismissed. In the facts and circumstances of the case, we are of the view that there is no bona fide in the Public Interest Litigation filed by the petitioner. Hence, the writ petition is dismissed with cost of Rs. 10,000/- (ten thousand). This amount will be deposited by the petitioner within a period of 6(six) weeks from today before the Jharkhand State Legal Services Authority, "Nyaya Sadan", Doranda, Ranchi. The Registry is hereby directed to send a copy of this order to the Member Secretary, Jharkhand State Legal Services Authority.