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(2004) 05 PAT CK 0065

In the Patna High Court

Case No : Civil Revision No. 1258 of 2002

Chairman, Coal India Limited and Others — APPELLANT

Vs

Heaven Sodium Silicate and Others — RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Citation : (2004) 05 PAT CK 0065

Final Decision : Allowed

Judgement

V.N. Sinha, J.—This civil revision application is directed against the order dt. 29.6.02 passed, by the District Judge, Patna in Misc. Appeal No. 39/01 whereby the learned appellate court dismissed the appeal filed against the order dt. 2.3.01 passed by the Subordinate Judge XIII, Patna in Title suit No. 29/01 whereunder the learned trial court directed the Defendant-Petitioner to supply coal to the Plaintiff-Respondent 1st set under linkage scheme on payment of cash until further orders.

2. The case of the Plaintiff-opposite party is that they are registered firms and they have established factories for manufacturing various products after making substantial investment and they require coal as a raw material for undertaking production of the various finished products in their factories. The coal is supplied by the Defendant-Petitioner under linkage system at notified price and not under their open sale scheme. The supply of coal was stopped by the Defendant-Petitioner which led to the filing of the instant suit praying intei alia to direct the Defendant-Petitioner to supply assured quantity of coal on receipt of its price under the linkage system.

3. The case of the Defendant-Petitioner is that Plaintiff-opposite parties are allowed coal supply under the linkage system at notified price and not under the open sale scheme of Coal India Limited. Under linkage system coal is supplied after actual consumption by the unit and submission of proper utilisation of coal certificate and status report from the department of Industry, Government of Bihar with whom Plaintiff''s firms are registered. Further on receipt of the status

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report as received from the General Manager, District Industries Centre through Director Industries, Government of Bihar, coal is released under the linkage system. The unit whose status is indicated in the status report as closed their supply is suspended. Status report dated 15.4.2000 received in regard to the Plaintiff indicated that their units are closed and in response to the said status report supply of coal to the Plaintiff under linkage system was suspended. This suspension of supply led to the filing of the instant suit. Having received the summons Defendant-Petitioner appeared in the trial court and submitted that as the Industrial units of the Plaintiff are closed their coal supply has been stopped otherwise there is every likelihood that the supplied coal may be misused.

4. The trial court, during hearing of the injunction petition, having considered the subsequent reports dated 2.5.2003 and 5.9.2000 received from the Industries department of the State Government directed under the order dated 2.3.2002 that on payment of cost required coal be supplied until further orders to all the Plaintiffs except Plaintiff Nos. 1, 17 and 19. The Defendant-Petitioner being aggrieved by the aforesaid order dated 2.3.01 filed injunction appeal reiterating the stand that Industrial units of the Plaintiff is closed since much before 15.4.2000 and reliance placed by the trial court under order dated 2.3.2001 over subsequent reports dated 2.5.2000 and 5.9.2000 is wholly misconceived. It was further contended that perusal of the two reports dated 2.5.2000 and 5.9.2000 do not indicate that the Industrial unit of all the Plaintiffs are in production and were not closed. It was further submitted that the report dated 5.9.2000 submitted by the Area Inspector only indicates that at the time of inspection of the unit of Plaintiff No. 2 there was some raw materials available in the unit and the unit was capable of production. With reference to the aforesaid observations in the report dated 5.9.2000, it was submitted in appeal that the observations contained in the report dated 5.9.2000 cannot be generalised for all the Plaintiffs. Placing reliance on the aforesaid submission, it was asserted in the background of the fact that unit of the Plaintiff-opposite party is closed since before the filing of the suit-there could not be any prima facie case or balance of convenience in their favour and as such the order passed by the trial court dated 2.3.2001 may be set aside.

5. The appellate court having considered the aforesaid submission, recorded a finding that unit of the Plaintiff at the time of their establishment were viable which gradually became sick and finally closed. Where after supply of coal to different units was also stopped and all those aspects required detailed enquiry by the trial court however during the period of enquiry, the Defendant-Petitioner was directed to abide by the order dt. 2.3.01 passed by the trial court and to maintain supply of coal to the Plaintiff unit on receipt of price.

6. This revision is directed against the aforesaid two orders, passed by the trial court and the appellate court dt. 2.3.01 and 29.6.02. During hearing of this civil revision application the counsel for the Petitioner has submitted that perusal of paragraph 8 and 9 of the order passed by the appellate court itself indicates that

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the industrial unit of the Plaintiff-opposite party is closed and the appellate court having taken note of the said closure has directed the court below to undertake a enquiry into different aspects of the closure of the different industrial units of the Plaintiffs. In view of the closure of the units, it is further submitted that there is neither prima facie case nor balance of convenience in favour of the Plaintiff-opposite party. Civil revision petition should, therefore, be allowed and direction to supply coal to the closed units during the period of enquiry should be set aside, failing which the supplied coal is likely to be misused.

7. Counsel for the Plaintiff-opposite party on the other hand, submitted that civil revision petition should be dismissed as it is apparent from the order passed by the trial court itself that the industrial unit of the Plaintiff is not closed. In this connection, learned Counsel has relied upon the observations from the report of the Area Inspector dt. 5.9.2000 quoted in the impugned order itself, and in that connection learned Counsel for opposite party has further relied upon the case of the Managing Director (MIG) Hindustan Aeronautics Ltd. v. Ajit Pd. Tarway AIR 1973 SC 77, the case of The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another, the case of 1996 I AD 1002 (SC) and the case of Gramin Gool Udyog and Others Vs. The C.I.L. and Others,

8. I have perused both the orders dt. 2.3.01 passed by the trial court and the order dt. 26.6.02 passed by the appellate court. So far the order dt. 2.3.01 passed by the trial court is concerned, it proceeds on the basis of the report dt. 5.9.2000 of the Area Inspector and quoting a extract from that report, the trial court has allowed the supply of coal on payment of price under the linkage system to all the Plaintiffs except Plaintiff Nos. 1, 17 and 19. Perusal of the said extracted portion of the report in the order dt. 2.3.01 indicates that a little raw material is available within the premises of the unit of Plaintiff No. 2 and the said unit is capable of production. The submission of the Petitioners with reference to the aforesaid extracted portion of the report is that the extract from the report is only in regard to the Plaintiff No. 2 and the observations made in regard to Plaintiff No. 2 cannot be generalised for all the Plaintiffs. According to the learned Counsel for the Petitioners the direction to supply coal under the order dt. 2.3.01 to all the Plaintiffs except Plaintiff Nos. 1, 17 and 19 on payment of price of coal is wholly misconceived. Counsel for the Petitioners further submitted that it is crystal clear from order dt. 2.3.01 itself that there was no material available before the trial court which could be ceiled upon to record a finding that industrial unit of all the Plaintiff-opposite party was in production and were not closed. I see sufficient force in the argument of the learned Counsel for the Petitioners. There was no material before the trial court to conclude that the industrial unit of all other Plaintiff-opposite party were in production and was not closed as such in my opinion, direction to supply coral under the linkage scheme to all the Plaintiffs except Plaintiffs 1, 17 and 19 is without any material on record and in that view of the matter, trial court was not required to issue any such general direction for supply of coal to all the Plaintiffs except Plaintiff No. 2. Now coming to the order dated 29.6.02 passed by the appellate court by which it

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directed the trial court to enquire into the causes of closure of the closed industrial units of the Plaintiffs and the ways and means to rehabilitate them with further direction to supply coal during the enquiry, learned Counsel for the Petitioners submitted that the same is wholly misconceived and has been rendered without appreciating that there is neither prima facie case nor balance of convenience in favour of the Plaintiff. So far the direction of the appellate court to the trial court to enquire into the causes of closure and ways and means to rehabilitate the industrial unit is concerned no exception could be had to the said direction. But the direction of the appellate court to supply coal to the closed industrial unit during the period of their closure appears to be arbitrary and misconceived as when according to the appellate court itself industrial units are closed, supply ors pal to them shall serve no purpose and shall only lead to its misuse. In that view of the matter, the direction of the appellate court to abide by and comply the order dated 2.3.01 of the trial court to supply coal appears to be wholly misconceived arbitrary and is, accordingly, set aside.

9. Now coming to the case law relied upon by the counsel for the opposite party, it is stated that in the case of Managing Director (MIG) Hindustan Aeronautics Ltd. (supra) the Hon''ble Supreme Court held that during hearing of the Revision petition arising out of injunction matter, the High Court should be slow in setting aside the concurrent finding of fact arrived by the 1st appellate court provided the appellate court has not exercised its jurisdiction illegally or with material irregularity. In the instant case, however, it would appear from the facts stated above that both the trial court as also appellate court directed the Petitioners. to continue with the supply of coal to closed industrial units, thereby exercised its jurisdiction with material irregularity as supply of coal to closed units shall serve no purpose and there is every likelihood of the coal supplied being misused. In view of my aforesaid finding other case law namely Municipal Corporation of Delhi (supra), the case of Smt. Rajnibai (supra) and the case of M/s Gramin Goel Udyog and Ors. (supra) relied upon by learned Counsel for the opposite party has no application to the facts of the case.

10. In view of the discussion held above, this Civil Revision application is fit to be allowed and the impugned order dated 29.6.02 passed by the appellate court and the order dated 2.3.01 passed by the trial court is fit to be set aside which is accordingly set aside. No. cost.

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