

(2010) 07 OHC CK 0052

In the Orissa High Court

Case No : Writ Petition (C) No. 2334 of 2010

Eimco Elecon (India) Ltd.

APPELLANT

Vs

Mahanadi coal fields Ltd. and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1
Companies Act, 1956 — Section 198, 269, 291, 309, 310
Constitution of India, 1950 — Article 226

Citation : (2010) 07 OHC CK 0052

Hon'ble Judges : V. Gopala Gowda, C.J;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. After dictation of the order on 7.7.2010, Mr. S.D. Das, learned Asst. Solicitor General, requested this Court to give him an opportunity to produce the original Power of Attorney executed in favour of the Sales Manager of the Company by its Director and thereafter this Court may pass necessary order. Therefore, on that day we adjourned the matter for the above purpose to the next date i.e. 8.7.2010. On 8.7.2010 Mr. Das produced the original Power of Attorney executed in favour of the Sales Manager by the Director of the Company, who has authorized him to represent the Company in the Court proceedings. On that date, the Court: further directed Mr. Das to produce the Resolution passed by the Board of Directors of the Company. Pursuant to the said order, on 14.7.2010, Mr. Das has filed a Misc. Case along with four documents including the Resolution of the Board of Directors. Mr. Das has placed strong reliance upon the Resolution under Annexure-3 regarding re-appointment of whole time Director under Sections 198, 269, 309 and 310 of the Companies Act. In support of the aforesaid legal submission made by Mr. Das, learned Senior Advocate who substantiates the same that the petition filed by the Sales Manager as the Power of Attorney Holder of the Director in whose favour the Company has passed resolution to institute he proceedings on behalf of the Company is maintainable.

He has placed reliance upon the decision of the Supreme Court in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, in support of his contention that the provisions of the Order 29, Rule 1 CPC are not applicable to the writ petition filed by the Company. Therefore, the decision of the Delhi High Court in the case of M/s. Nibro Limited Vs. National Insurance Co. Ltd. relied upon by the learned counsel for the opposite party no.4 is misplaced.

2. On the other hand learned counsel for the opposite party No.4 has seriously questioned the said documents under Annexure-3 contending that the same is not legal and valid and it is not in exercise of the power u/s 291 of the Companies Act. He placed reliance upon the decision of the Delhi High Court in the case of Nibro Ltd. Vs. National Insurance Co. Ltd., wherein it has been held as under:

Order 29, Rule 1 CPC does not authorize persons mentioned therein to institute suits on behalf of the Corporation.....It is well settled that u/s 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting and in all other cases the Board of Directors are entitled to exercise all its powers.

3. Relying on the aforesaid judgment, learned counsel for opposite party No.4 submitted that on the basis of the said documents the Sales Manager can not file a writ representing a Company.

4. Learned counsel for opposite party No.4 submitted that the principle enshrined in the C.P.C. is applicable to the writ proceedings and therefore the decision of the Delhi High Court referred to supra can be applied to the fact situation of the present case. He has also placed strong reliance upon the decisions of the Supreme Court in the case of The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ; and in the case of The State of Orissa Vs. Madan Gopal Rungta, , wherein the Apex Court succinctly laid down the law as to who can be a person to file a writ to enforce his legal and fundamental rights and also held that the right that can be enforced under Article 226 shall ordinarily be the personal or individual right of the petitioner himself. Pleading reliance upon the aforesaid judgments, the learned counsel for the opposite party No.4 vehemently contended that the Sales Manager, representing the Company on the basis of a Power of Attorney given by the Director of the Company, is not a legal person who can maintain the writ petition to enforce the fundamental rights guaranteed to a citizen under Part-III of the Constitution of India. Therefore, it is submitted that the writ petition filed by the petitioner is not at all maintainable and is liable to be dismissed.

5. We have carefully examined the averments made in the writ petition, the documents filed and also the decisions on which reliance has been placed by the

learned counsel for the parties with a view to answer the rival legal contentions urged on behalf of the parties with a view to find out as to (1) whether the writ petition filed by the Company represented by its Sales Manager is maintainable in law ?

6. This writ petition has been filed by a Company being represented by its Sales Manager on the basis of a Power of Attorney given by the Director. The Board of Directors of the petitioner-Company passed resolution authorizing the Director to represent the Company to institute the proceedings on behalf of the Company. Therefore, the Director has no further authority to execute the power of attorney in favour of the Sales Manager to act on his behalf in the Court proceedings. The power can only be given by the Board of Directors of the Company in exercise of its statutory power by passing the resolution under the provisions of Section 291 of the companies Act in favour of a Director or Principal Officer of a Company who is well versed with facts to speak, sign and verify the same in the pleadings. Therefore, the documents, namely, Power of Attorney and the Resolution passed by the Board of Directors of the Company giving Authority to its Director to sue in the Court of Law on its behalf, produced by Mr. Das, learned Senior Counsel will not support the case of the petitioner. Hence, the contention urged in this regard by the learned counsel for the petitioner is wholly untenable in law. Further, the Constitution Bench decisions of the Supreme Court cited by the learned counsel for opposite party No.4 in the case of Chiranjit Lal Chowdhury (supra); Madan Gopal Rungta (supra) & Calcutta Gas Company Ltd. (supra) are aptly applicable to the fact situation of the case.

7. In view of the above, we do not find any merit in the case and the writ petition is accordingly dismissed. The order dated 7.7.2010 dictated in the open Court stands.