

(2001) 05 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : C.M.P. No's. 532 and 926 of 2000

Gujarat Ambuja Cements Ltd. and Another

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 129, 130, 131, 132, 133

Penal Code, 1860 (IPC) — Section 147, 341, 427, 451

Police Act, 1861 — Section 23, 31

Citation : (2001) 2 ShimLC 441

Hon'ble Judges : C.K. Thakker, C.J.;Kuldip Chand Sood, J

Bench : Division Bench

Advocate : Shanti Bhushan, K.D. Sood, Manmohan and Ragvesh Singh, for the Appellant; M.L. Chouhan, D.A.G. for the Respondents No. 1 to 4, D.D. Sood and Navlesh Verma, for the Respondent No. 5, Lokender Thakur, for the Respondent No. 6 and Y.P.S. Dhaulta, for the Respondent No. 7, for the Respondent

Judgement

C.W.P. No. 532 of 2000:

Admitted

C.K. Thakker, C.J.—Mr. M.L. Chauhan, learned Deputy Advocate General appears and waives service of notice of admission on behalf of Respondents No. 1 to 4, Mr. D.D. Sood, learned Senior Advocate on behalf of Respondent No. 5, Mr. Lokender Thakur, learned Counsel on behalf of Respondent No. 6 and Mr. Y.P.S. Dhaulta, learned Counsel on behalf of Respondent No. 7.

C.M.P. No. 926 of 2000 :

2. This petition is filed by M/s. Gujarat Ambuja Cements Ltd. against State of Himachal Pradesh and other for interim reliefs in terms of paragraph 7 of the petition, inter alia, directing Respondent Nos. 1 to 4 (State authorities) to remove the blockade/obstruction effected by Respondent Nos. 5 to 7 (Transporters Associations) outside the petitioners factory premises at village

Suli, Post Office, Darlaghat, Tehsil Arki, District Solan and to ensure free ingress and egress facility to the petitioners factory by the petitioners officers, employees, servants, workers, agents, members, associates, relations and public at large as well as all means of transportation so as to ensure the Petitioner company to freely transport its products and raw materials. Other reliefs have also been claimed.

3. The case of the petitioners in the main matter (CWP No. 532 of 2000) is that it is a public limited Company incorporated under the Indian Companies Act, 1956 carrying on its business in manufacture and sale of cement under the name and style of "M/s. Ambuja Cement" in the State of Himachal Pradesh. According to the petitioners, it is one of the best managed cement companies in India. It has been conferred various prestigious awards for its performance, pollution control and management including the highest award, namely, "National Award for public recognition of outstanding activity for Prevention of Control of Pollution." As stated in the petition, the Petitioner have invested huge amount of more than five hundred crores of rupees in setting up of a Cement and Clinker Plant at Darlaghat, District Solan in the State of Himachal Pradesh. The project was approved by the World Bank/International Finance Corporation. It has brought substantial economic development in the State of Himachal Pradesh. Several persons from the State have been employed by the Company. It is also paying substantial amount by way of taxes.

4. It is alleged by the Petitioner company that certain transport Unions and Associations formed a Co-operative Society with the intent to monopolize the entire transportation work to them. To achieve the said object, illegal means and pressure tactics like relay hunger strike, rallies, agitations outside the petitioners factory gate and blockade of the National Highway have been adopted, which was contrary to law. According to the petitioners, initially the Company had taken trucks of the Society by entering into an agreement for a specific period. But again by adopting similar illegal tactics, the truck owner Association compelled the Petitioner company to enter into similar agreement. The Petitioner company being aggrieved by the said act, raised objections against such insistence and finally has approached this Court by filing a petition on 31st July, 2000 when the earlier agreement was to come to an end. A prayer was, therefore, made to grant interim relief (as also ex-parte ad interim relief) so that it may not be compelled to enter into agreement under duress, coercion or compulsion.

5. This Court, however, on 1st August, 2000 issued notice in the main matter as well as in CMP for interim relief. Since ad interim relief was not granted, the petitioners had once again to agree to illegal demands made by Respondent Nos. 5 to 7 and had to enter into fresh agreement, seated the learned Counsel for the Company. But even that agreement has come to an end. It is further grievance of the Company that even though several complaints have been made by the Company to the authorities (Respondent Nos. 1 to 4), for the reasons best known to the authorities, they did not take any effective and preventive step and

virtually gave green signal to illegal activities of Respondent Nos. 5 to 7. Such indifferent and illegal approach has compelled the Petitioner company to move this Court. It is, therefore, prayed that this is imminently a fit case to grant interim relief, as prayed for in this petition.

6. After the notice was issued, the Respondents appeared. All of them contended that as on today, there is no subsisting agreement between the parties and all questions raised in the petition have become academic. The Petitioner company, therefore, is not entitled to any relief, such less a writ of mandamus. It was also contended that if there is any dispute, disagreement or difference of opinion between the parties, it is open to the company to approach appropriate civil or criminal forum available to it and this Court in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution will not entertain the petition and decide disputed questions of fact between the parties. It was also argued that the Company had acted contrary to the agreement arrived at between the parties and it was the right of Respondent Nos. 5 to 7 to make agitation. It was also their fundamental right to make grievance against illegal action of the company and the petitioners cannot make grievance against such peaceful agitation by the truck owners. It was, therefore, submitted that the petition deserves to be dismissed.

7. We have heard Mr. Shanti Bhushan, learned Senior Advocate for the petitioners, Mr. M.L. Chauhan, learned Deputy Advocate General for Respondents No. 1 to 4, Mr. D.D. Sood, learned Senior Advocate for Respondent No. 5, Mr. Lokender Thakur, learned Counsel for Respondent No. 6 and Mr. Y.P.S. Dhaulta, learned Counsel for Respondent No. 7.

8. We are of the opinion that the questions agitated in the petition deserve consideration and accordingly we have admitted the petition.

9. So far as interim relief is concerned, it was submitted on behalf of the Company that the actions of Respondent Nos. 1 to 4 (State authorities) in not effectively preventing Respondent Nos. 5 to 7 in committing and continuing illegal and unlawful activities is inconsistent with and in contravention of the provisions of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Police Act, 1861. It is also the grievance of the petitioners that even though at several occasions, attention of the authorities was invited, no steps have been taken by them. It was stated that the authorities have even admitted in the affidavit in the present proceedings that there was "blockade" by Respondent Nos. 5 to 7 which was illegal and yet they have become silent spectators, thereby they had failed in discharging their constitutional obligations and statutory duties, which necessitated the Company to invoke the jurisdiction of this Court. It was, therefore, submitted that an appropriate direction is required to be issued to the State authorities (Respondent Nos. 1 to 4) to take appropriate steps against Respondent truck owners and Associations (Nos. 5 to 7).

10. Regarding action of Respondent Nos. 5 to 7, it was submitted that they have no right or authority to effect "blockade". When the period of agreement is over, it is open to the petitioners not to enter into fresh agreement with them. But even if it is assumed for the sake of argument that during the subsistence of agreement, there was violation of any term and/or condition of such agreement by the company or that though the company was required to enter into fresh agreement, there was default on the part of the Company, the Respondents can take legal recourse but they cannot take law in their hands by making management, administration and functioning of the company stand still. Such an action is illegal and unlawful and it cannot be permitted in any civilised society governed by Rule of Law.

11. It was stated that though the period of agreement had to come an end, even now Respondent Nos. 5 to 7 insist that the Company should enter into agreement again failing which they would continue their agitation. Such action, in the submission of the learned Counsel, is not in consonance with law and an appropriate order deserves to be passed by this Court. Looking to the affidavit of Respondent Nos. 1 to 4, it is clear that they have also supported Respondent Nos. 5 to 7 in their illegal acts.

12. Mr. Chauhan, learned Deputy Advocate General for Respondent Nos. 1 to 4 submitted that so far as State authorities are concerned, they have taken effective steps which they are required to take. FIRs have been registered and challans have been submitted in a competent Criminal Court and the matters await hearing. When there was "blockade" by the Respondent truck Associations, authorities have also taken actions to maintain law and order to ensure that public at large may not suffer. As on today, there is no subsisting agreement between the parties and the questions agitated in the petition do not arise and no direction is necessary at this stage.

13. Mr. Sood, learned Senior Advocate, instructed by Mr. Navlesh Verma, learned Counsel and Mr. Dhaulta, learned Counsel for contesting Respondents supported Mr. Chauhan. They further contended that peaceful agitation is a fundamental right guaranteed by Part-III of the Constitution of India. Such a right, therefore, neither can be interfered with by the petitioners nor by authorities, Respondent Nos. 1 to 4. No interim relief, hence, can be granted.

14. Having heard the learned Counsel for the parties and having gone through the relevant records and materials, we are of the view that the important questions of law have been raised by the petitioners and the petition deserves admission. Accordingly, the writ petition is admitted. So far as interim relief is concerned, prima facie, learned Counsel for the petitioners is right in submitting that Respondent Nos. 5 to 7 have taken certain steps, which cannot be said to be legal, valid, lawful or in exercise of fundamental and/or statutory right. For instance, it was stated in the petition that there was complete and total "blockade" by Respondent Nos. 5 to 7. It lasted for about six days and the business of the company had come to a total halt. It is, no doubt true that the

said averment had been denied by Respondent Nos. 5 to 7 in the affidavit-in-reply. The Respondents had controverted the averment and asserted that there was no "blockade" by Respondents No. 5 to 7. But from the record as also from the affidavit-in-reply of Respondent Nos. 1 to 4, the said fact had been clearly established.

15. In the affidavit of Respondent Nos. 1 to 4, it was admitted that Solan District Transport Operators Co-operative Society (SDTO) and Ambuja D?arla Kashlog Mangoo Transport Co-operative Society (ADKM) did resort to blockade of traffic in August, 1995 and in that regard, two criminal cases were registered at Police Station, Darlaghat being FIR No. 54 of 1995 on 13th August, 1995 under Sections 147, 451 and 427 of the Indian Penal Code as also FIR No. 55 of 1995 under Sections 147 and 341 of the Indian Penal Code. It is also admitted that Respondent Nos. 5 and 6 did resort to agitation in June, 1998 and two cases being FIR No. 37 of 1998 and FIR No. 56 of 1998 were registered. Likewise, in 2000, blockade was effected by the Respondents, which was "illegal" for which criminal case has been registered against the truck owners. It was further stated by the authorities that though the blockade had caused inconvenience to the petitioners, to the employees residing within the Petitioner factory premises as also "to the general public of the area", it was denied that essential supplies were disrupted or any sick person was deprived of medical treatment. No such report was lodged by the Petitioner company or its employees with the local police. It was, however, stated:

But the blockade was illegal and action as per law was initiated against the defaulter.

16. It is also pertinent to note that an agreement had been arrived at between the parties, i.e. between the Company and the truck Associations on 1st August, 2000, which is part of the record. The relevant part of Clause 1 reads thus:

1. Referring to the letter No. SDTO/2000 dated 20.7.2000 from SDTO and letter No. 638/ADKM 2000 dated 20.7.2000 from ADKM addressed to GACL and subsequent agitation and blockade of road leading to the GACL's plant at Suli P.O. Darlaghat by SDTO from 24th morning and 25th evening, respectively. The following is agreed with the mediation of Deputy Commissioner and Superintendent of Police, Solan.

17. Clause 5 is also relevant, which reads as under :

The above has been agreed by GACL with the assurance of SDTO and ADKM in the presence of Deputy Commissioner and Superintendent of Police, Solan that they would immediately lift the blockade on the road leading from Darlaghat to the GACL Plant and shall immediately resumed the GACL's normal transportation work.

18. The agreement is signed on behalf of the petitioners, contesting Respondents and also by the Deputy Commissioner, Solan. From the affidavit-in-reply filed on

behalf of the Respondent-authorities as also from the agreement entered into between the parties and signed by them, it is clear that there was "blockade" and it had been effected by Respondent Nos. 5 to 7. Thus, denial of "blockade" by Respondent Nos. 5 to 7 in their affidavit does not appear to be correct and record shows to the contrary.

19. A grievance was also made by the learned Senior Advocate against failure to take effective action and omission to discharge statutory duties and constitutional obligations by the State authorities. A complaint was made that the authorities have taken keen interest to favour Respondent Nos. 5 to 7 in their illegal demands and virtually compelled the petitioners to accept them. For that, our attention was invited by the learned Counsel to the counter affidavit of Respondent Nos. 1 to 4, wherein it was stated that Respondent Nos. 3 and 4 also tried their best to effect settlement between the petitioners and Respondent Nos. 5 to 7 and it was only due to the efforts of replying Respondents only that a settlement could be reached. A meeting was called by the administration to facilitate negotiations as the root cause of the blockade as per Respondent Nos. 5, 6 and 7 was dishonour of earlier agreement dated 9th August, 1998 by the petitioners. It was also stated that "it is denied that petitioners signed the agreement dated 2nd August, 1998 under the pressure of coercion."

20. Thus, as per the affidavit-in-reply of the authorities, the "blockade" was effected by Respondent Nos. 5 to 7. It had caused inconvenience to the petitioners and their employees as also public at large and vehicular movement was restricted in the petitioners premises, but essential supplies were not disrupted nor any sick person was denied medical attention.

In para 4(o), it was stated :

Admitted that the said right is admissible to ordinary citizens and Respondent Nos. 1 to 4 were all the time responsive to their duties inasmuch as criminal case was registered against the offenders causing the blockade, five rounds of negotiations were held as the basic problem which led to the blockade was non enforcement of a part of the earlier commitment by the Petitioner. It is also submitted that use of massive force was imminent if the problem was to be resolved only as law and order problem. But as the problem was in the nature of an agitation by one of the parties of an agreement, it was considered appropriate to exhaust the possibility of a negotiated settlement before use of force while at the same time ensuring that there was no violence or damage to public or private property in the intervening period.

21. On the basis of the above averments made by the deponent, it was submitted on behalf of the company that undue interest had been taken by the authorities by favouring Respondent Nos. 5 to 7. According to Respondent Nos. 1 to 4, criminal cases were filed and thus an action has been taken pursuant to the complaints made by the Company, but no precautionary and/or preventive measures have been taken in spite of attention being invited by the company to

the police authorities, so that no such illegal acts should be repeated. Under the provisions of Sections 129 - 134 and 149 of the Code of Criminal Procedure, 1973, Sections 141, 142 and 143 of the Indian Penal Code and Sections 23 and 31 of the Police Act, preventive measures ought to have been taken by the authorities. The allegation of the petitioners that the authorities have taken a partisan attitude by supporting the case put forward by Respondent Nos. 5 to 7 and by entering into merits of the matter and by stating that there was breach of agreement by the Company which resulted in "blockade".

22. Our attention in this connection was invited by the learned Counsel to a decision of the Apex Court in Communist Party of India (M) Vs. Bharat Kumar and Others, wherein it was held that calling for, holding of and enforcing ?bandh? by political parties is violative of fundamental rights of citizens and the Government was under legal obligation to take effective steps so that the citizens can exercise of their fundamental rights. It was also held that the Government must take steps to recoup and of recouping the loss from the sponsors and organisers of such "bandhs".

23. Reliance was also placed on two decisions of High Court of Kerala in Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, (against which the afdresaid petition was filed by the Communist Party of India in the Supreme Court) and Peoples Council for Social Justice, Ernakulam Vs. State of Kerala and Others,

24. The learned Counsel for the Respondents contended that remedy under Article 226 of the Constitution is ill conceived against the action of private individuals. Such powers are normally not exercised when disputed questions of fact are involved and the parties are left to get their disputes adjudicated and grievance vindicated in an appropriate forum. Reference was made to P.D. Shamdasani Vs. Central Bank of India Ltd., ; Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, and Prasanna Kumar Roy Karmakar Vs. State of West Bengal and others,

25. In our opinion, however, when attention of the authorities was invited and complaint was made in respect of acts alleged to have been committed by Respondent Nos. 5 to 7 and further that Respondent Nos. 1 to 4 in their affidavit had clearly, specifically and unequivocally admitted that there was total blockade by the contesting Respondents and that such blockade was illegal, we are of the view that the grievance of the Petitioner company is well founded that it was obligatory on the part of Respondent Nos. 1 to 4 to take precautionary and preventive effective measures. It also appears to us that averments made and allegations levelled in the affidavit of Respondent Nos. 1 to 4 that it has attempted to enter into merits of the matter and rival contentions of the parties which is not expected of the authorities under the Act. If there is default or departure of any term and/or condition of the agreement, it is indeed open to either partyvto approach a competent Court of law for redressal of grievances, but it is not expected of the authorities to opine that such blockade was effected

as there was violation of agreement by one of the parties to the contract. Such attitude by the State authorities may give a wrong signal. Moreover, by such act of the authorities, one of the parties to the agreement may feel that the authority, who has to enforce "law and order" situation is taking partial or partisan stand. The authority, in our opinion, has to maintain "law and order" keeping in mind relevant statutory provisions without embarking upon the correctness or otherwise of allegations by one party and the counter allegation by the other.

26. The question, then, as to what interim relief can be granted in the instant case.

27. The learned Senior Advocate for the petitioners has placed on record certain orders passed by this Court in similar matters.

28. In C.W.P. No. 762 of 1998 with C.M.P. No. 1455 of 1998 titled Him Neel Breweries Ltd. v. State of Himachal Pradesh and Ors. while issuing notice to the Respondents, following interim order was passed :

CMP No. 1455 of 1998

29. Notice accepted on behalf of the Respondents 1 to 6. Notice to Respondents 7 to 11 be served along with notice of the writ petition.

Reply-affidavit(s) within the same time. List along with the writ petition.

After hearing learned Counsel for the Petitioner and learned ? Advocate General and going through the records we are of the view that prima facie case is made out in favour of the Petitioner to pass ad interim order restraining Respondents 7 to 11 not to interfere and obstruct the transportation of the products of the Petitioner-company in its own trucks or the trucks hired by it belonging to truck unions other than Respondent No. 7. We also expect that Respondents No. 1 to 6 will also make all efforts to maintain law and order and prevent breach of peace and untoward incident which may result due to the acts of omission and commission of the parties.

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30. Likewise, in OMP No. 315 of 1994 in Civil Suit No. 118 of 1994 titled Associated Cement Companies Ltd. v. Vipin Bihari and Ors. on 20th September, 1995, interim relief was granted by this Court.

31. Our attention was also invited to an order passed on 5th July, 1999 by a learned Single Judge of this Court in Civil Suit No. 203 of 1995, titled Himachal Chambers of Commerce and Industry, Bata Mandi and Ors. v. Sirmour Truck Operators Union and Ors. wherein the suit was ordered to be disposed of on a statement on behalf of Defendant No. 1 that Defendants would not cause any obstruction to the movement/transshipment of the goods of the Plaintiff?s either in their own trucks or in the trucks hired by them from any source. The learned Counsel for the Company made a statement at the Bar that if such a statement

is made on behalf of Respondent Nos. 5, 6 and 7, the petitioners do not press the present petition, but as the contesting Respondents had not accepted it, the petitioners have prayed for grant of interim relief.

32. In the facts and circumstances of the case, we are of the opinion that the prayer made by the petitioners deserves serious consideration. As important questions of law are involved in the main matter, we have admitted the petition. On interim relief, from the relevant record, affidavits and counter affidavits including the affidavit of Respondents No. 1 to 4, prima facie, case has clearly been made out by the petitioners. Considering the totality of the facts and attending circumstances, it is directed that neither Respondent Nos. 5, 6 and 7 nor their servants, agents, nominees, representatives or any other person on their behalf will create any obstruction/blockade or in any other manner effect ingress and/ or egress facilities to the petitioners factory during the pendency of the petition. Similarly, Respondent Nos. 1 to 4 are also directed to ensure ingress and egress facility to the petitioners factory premises by the petitioners officers, employees, servants, workers, agents, members, associates, relations and/or public by allowing all permissible means of transportation and ensure the petitioners free transport of its products and raw materials without there being any obstruction and/or blockade. CMP accordingly stands disposed of. In the facts and circumstances of the case, there will be no order as to costs.