

(1998) 02 CAL CK 0034

In the Calcutta High Court

Case No : G.A. No. 4503 of 1997, APO (T) No. 737 of 1997 and W.P. No. 2395 of 1997

Hindustan Copper Ltd. and Others

APPELLANT

Vs

Copper Mazdoor Union and Others

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 25O

Citation : (1998) 79 FLR 295 : (1998) 2 LLJ 547

Hon'ble Judges : Sujit Barman Roy, J; Bhagabati Prosad Banerjee, J

Bench : Division Bench

Advocate : Aninda Mitra, A.S.G., Arunava Ghosh and K. Chandra, P.K. Roy and B. Samaddar, for the Appellant; P.S. Sengupta, D. Sengupta and Dwaipayan Sengupta, for the Respondent

Judgement

Bhagabati Prosad Banerjee, J.—This is an appeal filed by Hindustan Copper Limited, against the judgment dated December 1, 1997 passed in W.P.No.2335 of 1997, directing that the order of closure of Musaboni Copper Mines situated in the State of Bihar could not be given effect to till the review application filed by some other unions before the Central Government was pending.

2. The learned Judge was of the view that there has been no proper application of mind when the original order was passed and that was the reason His Lordship was of the view that the Central Government should hear out the re view application filed by some other unions first.

3. Copper Mazdoor Union and others filed a Writ application for cancelling and withdrawing the permission granted by the Central Government for closing down the industrial i establishment at Musaboni (including Badia mines) situated in the State of Bihar with effect from December 1,1997).

4. The Hindusthan Copper Corporation; Limited owns various Copper Mines. Musaboni (including Badia mines) was brought into production in the year 1928.

The mine was under continuous production for the last 68 years and it is stated that for its operation during these; periods the mine was developed vertically to a depth of 1.2 Kilometres under the ground and the mining operation till the end of November was operating below the depth of 1.2 Kilometres. According to the appellant-company that; because of the mining at a depth below 1.2 Kilometres had become costly and un-economic for various reasons for which facts, figures and particulars were furnished to the Central Government and it is the case of the appellant-company that apart from technical reasons the mine had not become viable from the financial point of view also as the cost of production of metal in ore from that mine was Rs. 1,46,699 per ton for 1996-1997. As compared to this, cost of production per ton of metal was only Rs. 70,913 from Khetri Mine (Rajasthan) Rs.48,221/- from Khodai Mine (Rajasthan) Rs.82,499/-, from Rakha Mine (Bihar) Rs.27,495/- from Malanjkhandi Mine (Madhya Pradesh) and also relied on the recommendation of Chelliah Committee appointed by the Government of India in this behalf to study the economic aspect of non-ferrous metal ores in India. The said Committee submitted a report in the year 1993, recommending that "The company should take further measure to improve its cost effectiveness by closing down un-economical underground mines in the eastern sector". Under the provisions of Section 25O of the Industrial Disputes Act, no industrial establishment could be closed down by the management without obtaining permission from the Central Government. The Company after taking a decision to close down the mining operation with effect from December 1, 1997, applied before the Central Government in the prescribed manner and in the prescribed form for obtaining such permission in advance.

5. The Central Government accordingly allowed the application seeking permission of the Government for closure of Musaboni Mine and the same was communicated by the letter dated October 1, 1997. The copy of the said letter was addressed to the Chairman- cum-Managing Director, Hindustan Copper Limited, Indian Copper Complex, Musaboni Mine, P.O. Musaboni Mine, Dist. Singhbhum, Ghatshila, Bihar with copy to General Secretary, Musaboni Mine's Labour Union and other unions and authorities who were all in Bihar.

6. It is also an admitted position that an application for review under the provision of Sec. 25-O(5) of the Industrial Disputes Act, wherein it is provided that the appropriate Government may, either on its own motion or on the application made by the employer or any workman review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication. Such an application for review was filed not by the writ petitioner but some other union and the learned Single Judge disposed of the writ application without giving any opportunity to the appellant to file any affidavit-in- opposition and/or to contest the matter of its merit but simply directed that the mine could not be closed down by the appellant till the disposal of the review application. The representations in the form of review was received by the Government of India from three unions (Copper Kamghar Union, Jharkhand Khan Mazdoor Union and Musabani Mine's Labour Union) requesting

by review of the decision communicated had already been considered by the Central Government and that the Central Government was of the view that there was no reason to call for a fresh hearing and accordingly, rejected the said application for review. The order of the learned Single Judge was passed on December 1, 1997 and the said review application was rejected and decision was communicated to the said unions on Decembers, 1997.

7. Mr. Aninda Mitra, learned Additional Solicitor General of India, appearing on behalf of the appellant, contended that this Court had no territorial Jurisdiction in this matter as no part of cause of action had arisen within the territorial Jurisdiction of this. In support of this objection, Mr. Mitra, stated that admittedly (a) the mine is situated in the State of Bihar, (b) the workers who are affected by the order are all residing in the State of Bihar (c) the notice of hearing given to the unions, were received at Bihar, (d) the hearing of the case had taken place at New Delhi, (e) the order was passed in New Delhi, which was under the challenge, (f) the order has become effective and its applicability is confined to Bihar.

8. Accordingly, it is submitted that no part of cause of action had arisen with the jurisdiction of this Court as against this objection.

9. Mr. Parthasarathi Sengupta, learned Counsel appearing on behalf of the respondents-writ petitioners, submitted that the decision for closure of the mine was taken by the appellant whose head office and the registered office is situated in Calcutta and that at this stage, the writ petitioner-opposite party is at least entitled to get an order from this Court restraining the Company from closing down the mine and appellant's registered office is situated in Calcutta and accordingly, this Court has jurisdiction in the matter.

10. It may not be out of place to mention that Musaboni Mine's Labour Union had also filed another Writ Application in the self same matter in CWJC No. 3113 of 1997 (R) in the Ranchi Bench of the Patna High Court which is still pending.

11. Mr. Sengupta, learned Counsel appearing on behalf of the Writ Petitioner-Opposite Party, submitted that the Writ Petitioner- Opposite Party had also, challenged the validity and/or legality of the Order passed by the Central Government u/s 25-O of the Industrial Disputes Act for keeping in abeyance of the order u/s 25-O of the Industrial Disputes Act, till the disposal of the review application, does not serve any purpose.

12. According to the order of the learned Single Judge, since the review application has been disposed of by the Central Government, the order of the learned Trial Judge has spent of "his force and the order passed by the Central Government u/s 25-O granting permission for closure of the mine revives and unless the order passed by the Central Government on review which might give rise to a fresh cause of action is challenged the Writ Petitioner-Opposite Parties are not entitled to get any relief in this appeal.

13. On the question of power of the Central Government to grant permission u/s 25-O(2) which provides that where an application for permission has been made under subsection (1) the appropriate government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure, may having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order should be communicated to the employer and the workmen. The provision of Section 25-O before amendment made in the year 1982 and Section 25R relating to awarding of punishment was held to be violative of the provisions of Article 19(1)(g) of the Constitution by the Supreme Court in the case of *Excel wear v. Union of India* reported in (1978-H-LLJ-527).

14. In that case, the Supreme Court held that right to close business is an integral part of the fundamental right to carry on business. But no right is absolute in its scope, so is the nature of this right. It can certainly be restricted, regulated and controlled by law in the interest of general public. The original Section 25-O was found to be violative of the provision of Article 19(1)(g) & (f) of the Constitution, the same was declared ultra vires. The present Section 25-O(2) had laid down certain restrictions and conditions for regulating the power of the management to close down any establishment. Or in other words, the object of this legislation is to take away the power of the management to close down any industrial units according to their whims and caprice and for this purpose, the Central Government had to decide this question having regard to the genuineness and adequacy of the reasons stated by the employer and the interest of the general public and other relevant factors.

15. On the merit of the case, Mr. Mitra, submitted that the Central Government after proper application of mind, had taken a decision in accordance with the law having regard to the matters enumerated in Section 25-O(2) of the said Act.

16. Mr. Sengupta, submitted that various points specifically raised by the workmen were not properly considered and that it was the duty on the part of the Central Government to investigate and verify the correctness of the statements made by the Company in support of the case of the management that it was not economically viable to run the said mine any longer. It was submitted that there was total non-application of mind on the part of the Union of India in granting approval to the said closure and that the order so communicated in this behalf by the Desk Officer was not in compliance with the provisions of the statute. Various other points were raised by Mr. Sengupta to show for the purpose of establishing the case of the workmen that mere was genuine reason and/ or the sounds were not at all adequate for the Central Government to accord approval.

17. On true and proper construction of the provisions of sub- section (2) of Section 25-O of the Act, it appears that the Central Government after making

such enquiry as it thinks fit and after giving opportunity of being heard to the employer, the workmen and all persons interested in such closure having regard to the genuineness and adequacy of the reasons stated by the employers, interest of general public and other relevant factors by order and for reasons to be recorded in writing grant or refuse to grant such permission.

18. Accordingly, the requirements are that (a) the Central Government after making an enquiry as it thinks fit, (b) opportunity of being heard to all concerned, (c) the decision will be taken having regard to the genuineness and adequacy of the reasons stated by the employer, (d) the interest of the general public, (e) and other relevant factors. All these factors viz., genuineness and other factors enumerated is controlled by the word "having regard to". The expression "having regard to" was also there in Section 47(3) of the Motor Vehicles Act, 1939, wherein it was provided that a regional transport authority may, having regard to the matters mentioned in Sub-section (1) limit the number of State Carriages....."

19. The Supreme Court in the case of Mohd. Ibrahim v. SAT, Madras reported in AIR 1970 SC 1543 at p. 1550, held that an order u/s 47(3) of the Act is not a matter of mere form but a substance. In that case, it was held that before deciding to grant permit the number of State Carriages on a particular route has to be fixed and there may not be any separate order giving reasons or a formal order but in substance there must exist a decision.

20. The expression "having regard to" had been considered by the Privy Council in AIR 1943 164 (Privy Council) wherein it was held that the words "having regard to", in a statutory provision do not mean that there must be very strict compliance with the statutory provisions but the provisions should be taken for guidance only.

21. Accordingly, it is a mere guidance for the Central Government which can grant approval or not and the expressions genuineness or adequacy of reasons and/or the interest of general public are to be taken for guidance only and it does not mean that the Central Government while passing this order must enter into the grounds of genuineness and adequacy as an appellate authority but these are mere guidelines which are for guidance only. Accordingly, in pur view, it is no longer open to this Court to sit in appeal over the decision of the Central Government hi this regard and the density of judicial review as laid down by the Supreme Court in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, could not be made applicable in the case of exercise of power u/S 25-O of the said Act.

22. We have also to keep in mind that the reasons for which Supreme Court struck down the original Section 25-O of the Act and that after amendment certain reasonable restrictions were sought to be imposed and the only restriction is that the management could not close down without obtaining approval of the Central: Government and before granting approval the

Parliament has laid down certain guidelines which have to be taken into consideration. The original file was produced and on the file it appears that the parties were heard at length and for the purpose of obtaining report, the Regional Labour Commissioner, Dhanbad, was requested more than once to enquire and submit report. But report was not submitted. Within the scheme of the Act, if the decision of the Central Government is not given within 60 days from the date of the application in that event, the grant of permission would be implied or automatic so the Central Government has to exercise its powers within 60 days and they cannot wait beyond 60 days for the report. If there was any lapses on the part of the Regional Labour Commissioner, Dhanbad, in that event, the Central Government was not bound to wait and allow the period fixed by the Parliament in this behalf lapse and consequence followed.

23. From the file it appears, that the matter travelled from one ministry to another and various authorities, who considered and kept their opinions and observations on file and in view of the peculiar facts and circumstances of the case and colossal loss that if the mines are allowed to continue in that event, monthly loss would be about 3 crores. Under such circumstances, we do not find any reason whatsoever to interfere with the decision of the Central Government particularly in view of the fact that the Court cannot compel any party to carry on business knowing fully well that carrying of such business will entail huge loss. The Court in view of the limited power of judicial review by the High Court considering the scope and ambit and the power of the Central Government u/s 25-O of the said Act, this Court is unable to hold that there was no proper application of mind on the part of the Central Government and/or the order of the Central Government suffered from any infirmity.

24. With regard to the territorial jurisdiction of this Court, true that the Head Office and the Registered Office of Hindustan Copper Corporation is situated in Calcutta but as hereinbefore stated that everything happened beyond the jurisdiction of this Court excepting that the initial decision for closure was taken at the Registered Office at Calcutta nothing has happened within the jurisdiction of this Court. At best, the relief could be obtained against Hindustan Copper but no relief could be granted against the original order passed by the Central Government as the said order was passed in New Delhi in respect of the mine situated in the State of Bihar whose workers are also residing in the State of Bihar and the said order is meant to be effective within the State of Bihar and when another Writ application is pending in the Ranchi Circuit Bench of the Patna High Court, it was inappropriate on the part of the writ petitioners-opposite parties to move the writ application to this Court but having regard to the facts and circumstances of the case and the fact that the Central Government had already disposed of the review application, the order of the learned Trial Judge has spent of his force and having regard to the merit of this case, we are not making any final pronouncement on the question of jurisdiction as we are of the view that the learned Trial Judge in the facts and circumstances of the case, should ; not have entertained the writ application during the pendency of the

review application as the said review application is a statutory and alternative remedy available to all the parties which must be held to be an effective alternative I remedy and the order under review is not under challenge, this Court has no jurisdiction to grant any relief to any of the parties. Accordingly, the order of the learned Trial Judge is set aside.

The appeal and the application both stand disposed of. There will be no order as to costs.

On the prayer of Ld. Counsel appearing for the Mazdoor Union there will be an order of stay of operation of this Judgment/ order for a period of 10(ten) days from date.

Sujit Barman Ray, J.

25. I agree