(2012) 09 JH CK 0148

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 4694 of 2001

M/s. Bharat Coking Coal Limited, Dhanbad and Others — APPELLANT

Vs

The State of Jharkhand and Another — RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:
Industrial Disputes Act, 1947 — Section 29, 32

Citation : (2012) 09 JH CK 0148

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Mehta, Amit and Mr. Amit Kr. Sinha, for the Appellant; Manoj Kr. No. 2, APP for the State and Mr. Prabhash Kumar, Advocate CGC for O.P. No. 2, for the Respondent

Judgement

R.R. Prasad, J.—Heard learned counsel appealing for the petitioners and learned counsel appearing for the opposite parties. When the services of Govind Mahato were terminated by the Management of the Company, industrial dispute was raised and whereby reference was made before the Central Government Industrial Tribunal No. 1, Dhanbad vide Reference No. 136/1991.In that case the award was passed in favour of the employee on 15th May 2000, whereby the employer was directed to reinstate the employee in the services with 25% back wages.

Being aggrieved with that award, a writ petition vide CWJC No. 472/2001 was preferred before this Court, which was admitted on 05.02,2001. Admittedly, this Court never stayed the operation of the award dated 15th May 2000. In course of time, Assistant Labour Commissioner. Central, Dhanbad, issued a notice to the petitioners to show cause as to why the prosecution be not launched on account of non-implementation of the award dated 15th May 2000. In response to that notice, it was Intimated to the Assistant Labour Commissioner. Central, Dhanbad, that against the award dated 15th May 2000, a writ application has been preferred, which has been admitted and in the said case an application for staying the operation of the award has also been filed. It was also intimated that the petitioners are waiting for the final outcome of the case. There upon. Assistant Labour Commissioner, Central, Dhanbad, lodged a complaint before the Chief Judicial Magistrate, Dhanbad for non-Implementation of the award by the petitioners. The said complaint was registered as I.D. Case No. 526 of 2001. Upon which, cognizance of the offence punishable u/s 29 of the Industrial Dispute Act, 1947, was taken against the petitioners, which is under challenge.

2 Mr. Amit. Kumar Sinha, learned counsel appearing for the petitioners submits that since the award had been challenged in this Court in CWJC No. 472/2001, which has been admitted and the petitioners were waiting for the final outcome of the case, no step was taken for implementation of the award and, therefore, in such eventuality, it can easily be said that the petitioners had had no mens rea at all for not Implementing the award and under the circumstances, the petitioners cannot be said to have committed offence u/s 29 of the Industrial Dispute Act, 1947, Further submission, which was advanced, is that the persons, who were never concerned with the implementation of the award, cannot be prosecuted for an offence u/s 29 read with Section 32 of the Act, rather only the person, who was responsible for not implementing the award, can be prosecuted for an offence u/s 29 read with Section 32 of the Act. In this regard, it was stated that under the Certified Standing Order the disciplinary authority is the Project Officer/ Agent of the colliery and, accordingly, he is the appointing authority and, thereby, the petitioners, other than petitioner no. 6, who, at the relevant point of time, was the Project Officer, cannot be prosecuted u/s 29 of the Industrial Dispute Act.

Learned counsel in support of his submissions, has referred to a decision rendered in the case of Bharat Coking Coal Ltd. Vs. Union of India (UOI) and Others, ." Thus, it was submitted that the order taking cognizance, is fit to be quashed so far as petitioner nos. 1 to 5 are concerned. It was submitted that so far as petitioner no. 6 is concerned, he can not be prosecuted also as the matter since was pending before this Court, he was waiting for final outcome of the case and, as such, he cannot be said to have had any mens rea not to implement the award, passed in favour of the employee and in the circumstances also the order taking cognizance is fit to be quashed so far as petitioner no. 6 is concerned.

3. As against this, Mr. Prabhash Kumar, learned counsel appearing for O.P. No. 2 submits that admittedly, when the writ application was preferred before this Court against the award passed in favour of the employee, the operation of the award had never been stayed by this Court and, thereby, the petitioners were duty bound to implement the award and since the award was not implemented, all the petitioners are equally liable to be prosecuted.

4. In the context of the submissions advanced on behalf of the petitioners, one needs to take notice of the provisions as contained in Section 29 of the Industrial Dispute Act, which reads as follows:-

29. Penalty for breach of settlement or award.- Any person who commits a breach of any term, of any settlement or award, which is binding on him under this ACt, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, land where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fine the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

5. From perusal of the same, it does appear that any person, who commits a breach of any term of any settlement or award, can be punished for an offence u/s 29 of the Act. In other words, it can be said that the person, who was responsible to implement the award, is liable to be punished. But, here in the instant case, the complainant has proceeded with the prosecution against six persons, out of them, petitioner no. 1 is the Company Itself. Whereas petitioner nos. 2 and 3 are the Chairman-cum-Managing Director and the General Manager I/C (P MR) respectively. Further, petitioner nos. 4 and 5 appear to be the Director (Personnel) and the General Manager, Sijua Area respectively whereas the petitioner no. 6 happens to be the Project Officer of the concerned colliery. The stand of the petitioner is that under the Certified Standing Order, the disciplinary authority is the Project Officer/Agent of the colliery and, accordingly, he is the appointing authority.

6. In such circumstances, only petitioner no. 6 happens to be responsible for not implementing the award. Somewhat similar situation fell for consideration before this Court in a case referred to above where His Lordships observed as follows:-

14. In all other impugned notices the Chief General Manager of the concerned area of the colliery was advised to implement the award, failing which steps would be taken under Sections 29 and 32 of the said Act. All these notices have been annexed as Annexures A series. Similarly, for non-implementation of the settlement, the impugned notices were issued mentioning that the General Manager/Secretary of the Company entered into a settlement with the Union but the said settlement was not implemented. All these notices have been rightly issued by the Assistant Labour Commissioner, Dhanbad asking the General Manager and the Manager to show cause as to why they should not be prosecuted u/s 29 read with Section 32 of the Act for their failure to implement the Award. But there was no occasion for the Assistant Labour Commissioner to issue show-cause notice to the Chairman-cum-Managing Director and the Secretary of the Company for the alleged non implementation of the award, particularly when, as noticed above, the authorities responsible for the implementation of the settlement of the award has been prescribed by the petitioner Company, It would have been different if the copies of the show cause notice issued to the officers responsible for implementation of the settlement of award be given to the Chairman-cum-Managing Director and the Secretary of the

Company for their information and follow up action.

In the circumstances, it can easily be said that the persons, who were not responsible for implementing the award, cannot be prosecuted u/s 29 of the Industrial Dispute Act and, thereby, order taking cognizance is bad so far as petitioner nos. 1 to 5 are concerned.

So far as petitioner no. 6 is concerned, I do not find any illegality in the order taking cognizance. Accordingly, he would be proceeded with the case.

In the result, this application is partly allowed.

