

(2009) 09 CAL CK 0005

In the Calcutta High Court

Case No : F.M.A. No. 2318 of 2005 W.P. No. 1841 (W) of 2000

M/s. Eastern Coalfield Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-2009

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 7

Citation : (2009) 09 CAL CK 0005

Hon'ble Judges : Pinaki Chandra Ghose, J;I.P. Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an appeal from a judgment and order dated 11th July, 2005 in a writ application W.P. No. 1841 (W) of 2000, Eastern Coalfields Limited v. Union of India and others. By this judgment and order the award dated 1st December, 1988 passed by the Central Government Industrial Tribunal, Asansol in reference No.4 of 1989 was affirmed.

2. Hence, this appeal.

3. The issues involved are very short. But, proceedings emanating from the dispute have spread over three decades.

4. In the early 70s, when there was no nationalisation of coal. There was a public company North Dhemo Coal Company Ltd. with its principal office at Calcutta. This company owned a coal mine called Burradhemmo Mines.

5. On and from 11th June 1972 the colliery was declared closed by its owners. All 1282 workers were discharged. This event gave rise to an industrial dispute. The owners, workers and the Central Government entered into a settlement, known as the tripartite settlement, on 13th September 1972. It appears that further to this settlement part of the mine was restarted with 600 workers.

6. Thereafter, the Coal Mines (Nationalisation) Act 1973 came into force. By this

Act inter alia all rights of this colliery were transferred to and vested in the Central Government. This coal mine became the property of Eastern Coalfields Limited, a Government of India Company, the appellant herein. These 600 workers who had been re-employed were given work in other mines under the control of the Central Government, as this mine was declared closed on 16th May 1973.

7. The above tripartite settlement was interpreted by the workers who could not be absorbed as a promise by the then owners of the mine to reinstate them.

8. A substantial body of these workers asked the Government of India, Ministry of Labour to refer the dispute arising out of alleged non implementation of the tripartite settlement, under the Industrial Disputes Act. On 11.10.1988, a reference was made at the instance of T.K. Sarkar and 238 others, being respondent Nos.2 & 3 herein to the following effect:

Whether the General Manager, Sitarampore are of M/s. Eastern Coalfields Limited, Borachak House, P.O. Sitarampore, District - Burdwan, was justified in denying employment to Sri T.K. Sarkar and 238 others (list enclosed in the annexure A) the retrenched workmen of Burradhem Colliery by not implementing of the tripartite settlement dated 13.09.1972. If not, to what relief the workmen are entitled and from what date?

9. The appellants were not prepared to give any recognition to these workers. They said that they were retrenched by their earlier employer and were never taken back. Neither was there a promise to take them back in the future. That was the interpretation the appellant has put to the tripartite settlement. Further they say that by section 7 of the above Nationalisation Act, no liability of the erstwhile owner is assumed by the Central Government or the appellant Government company.

10. Both these contentions were rejected by the Tribunal. By its award dated 1st December, 1988, the Tribunal directed re-employment and till re-employment a lumpsum amount of Rs.7000/- and a payment of Rs.1000/- per month to be paid to each of these workers till they attained the age of 60 years.

11. Against the award of the Tribunal the above writ application was preferred. After a detailed consideration of the cases of both parties the Hon'ble First Court by the judgment and order dated 11th July, 2005 has sustained the award of the Tribunal and dismissed the writ petition. In this appeal, the selfsame points as had been urged before the writ Court have been strenuously urged. The rival contentions of the parties are narrated below:

Learned counsel for the appellant has made various submissions:

a) There was substantial delay in raising of this alleged industrial dispute. In support of this contention he has cited the cases of Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC and S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka,

b) The Tribunal has erred and gone beyond the reference and the Hon"ble First Court had equally erred in affirming the said decision of the Tribunal. He has relied on the case of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, .

c) He has also submitted that in the facts and circumstances of this case industrial dispute cannot arise and as such dispute cannot arise out of a closed business, citing Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, .

d) The applicants before the industrial Tribunal were not workmen at all as their service has been terminated and, therefore, the Tribunal had no jurisdiction to entertain such dispute citing Maruti Udyog Ltd. Vs. Ram Lal and Others, .

e) Since the Tribunal had failed to exercise its jurisdiction, the order of the Tribunal was vitiated citing Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

He has also cited Secretary, State of Karnataka and Others Vs. Umadevi and Others, and U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, .

12. On the other hand, learned counsel for the respondent workmen has cited the decision of The The Workmen Vs. The Bharat Coking Coal Ltd. and Others, and the unreported decision of the Division Bench of our Court presided over by the Hon"ble Justice Satyabrata Sinha, Eastern Coalfield Limited v. Swadhin Kumar Paul and others delivered on 9th April, 1999 in FMAT No. 943 of 1996 and another unreported decision of the Division Bench of the Ranchi Bench of the Patna High Court dated 29th August, 1996 in CWJC No. 2791 of 1991(R) with CWJC No.1183 of 1992(R), being employers in relation to the management of Barakar Engineering and Foundry Works, Dhanbad, to make the following contentions :

a) There was a genuine industrial dispute.

b) The Coal Mines (Nationalisation) Act, 1973 did not prevent vesting of this dispute on the appellant.

c) The tripartite settlement had been rightly interpreted by the industrial Tribunal.

d) The order so passed by the industrial Tribunal and affirmed by the Hon"ble First Court was justified relying on the 1978 Supreme Court decision. It was contended that non-vesting of pre-existing liability of the owner did not include any industrial dispute which was subsisting and further that the industrial dispute in this case had arisen prior to taking over by the mine of the appellant, by reason of non-implementation of the tripartite settlement by the owner.

13. We have considered the rival contentions of the parties.

14. An award of an industrial tribunal is final under the Industrial Disputes Act, 1957. The power of the writ Court to interfere with such award is very limited. It is now trite that a writ Court can interfere with decisions made by subordinate

adjudicating authorities if that authority has refused to exercise jurisdiction vested in it or has exceeded its jurisdiction. Such jurisdictional error is made when the authority considers a matter which it had no power to entertain or in considering a matter, it takes into account issues which ought not to have taken into account or does not take into account issues which it ought to have taken into account. However an order can be interfered with if some mala fide is involved in making the consideration. Furthermore, if the order passed is so unreasonable or palpably wrong or perverse that no reasonable authority could have passed the order, the Court will certainly interfere. A subordinate tribunal is entitled to take a plausible view, even if that view is not shared by the Court or may not be correct. In such cases the Court will not interfere.

15. We are well supported in the above view by the decision in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

16. We find that in the instant case the tribunal has found that the tripartite settlement enjoined the previous owners to reinstate 600 odd workmen as stated above. Further the tribunal held that section 7 of the Coal Mines (Nationalisation) Act, 1973 did not prevent an industrial dispute which had arisen prior to the take over by the Government, to be pursued against the new management. From a consideration of the decision of Supreme Court of India in Workman v. the Bharat Cooking Coal Limited and others it is plain that section 7 of the Nationalisation Act did not prevent vesting of this industrial disputes in the appellant.

17. The Hon"ble Supreme Court in the above case specifically held that the reference to liabilities in section 7 meant monetary liability.

18. The Tribunal has come to the finding of the Tribunal that the erstwhile owners were obliged to re-employ the present respondent workmen in implementation of the tripartite settlement which is a plausible view. This obligation continued after taking over of the mine by the appellant who became obliged to re-employ the workmen and in lieu thereof to pay of them compensation which is also a plausible view. We find no reason to interfere with such findings.

19. In our opinion, if, after retrenchment, an employer enters into a settlement with the retrenched employees, that they would be gradually absorbed into the organisation, and there is breach of that promise, it gives rise to an industrial dispute. Therefore, the order of reference was within jurisdiction. Since, as we have observed that a retrenched employee can also raise an industrial dispute, much weight cannot be given to the argument that whether the respondent/workmen were "workmen" within the meaning of the Industrial Disputes Act, 1957 was not determined by the tribunal or the Hon"ble First Court. Therefore, those contentions also fail. Further, there is no evidence to show that after the tripartite settlement, North Dhemo Coal Company went into liquidation, so as to constitute "closed business." Therefore, the Pipraich Sugar Mills decision also has no application. Further the Hon"ble First Court has made a detailed consideration of the facts and the relevant law on the subject and has affirmed the award of

the tribunal. In our considered opinion the order of Hon"ble First Court does not suffer from any illegality or infirmity.

20. Therefore, we affirm the judgment and order under appeal. The appeal is accordingly dismissed. There will be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Later :

Stay of the operation of this order and judgment prayed for which is granted for two weeks till after the vacation.