

(2002) 04 JH CK 0089

In the Jharkhand High Court

Case No : Civil Review No"s. 110 and 120 of 2001

State of Jharkhand and Sachida Nand Akhauri

APPELLANT

Vs

Arbind Kumar Roy and Others

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 226

Citation : (2002) 04 JH CK 0089

Hon'ble Judges : Vinod Kumar Gupta, C.J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : M.M. Banerjee, A.G. and A.K. Das, J.C. to A.G. in C.R. No. 110/01, S.B. Gadodia and B.P. Mishra, for the Appellant; Bimal Kumar, M.M. Banerjee, A.G. and A.K. Das, J.C. to A.G., in C.R. No. 120/01 and A.K. Sahani, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. By this common order we propose to dispose of these two Review Applications, being Civil Review Nos. 110 of 2001 and 120 of 2001, as also the implead-ment application dated 22.1.2002, filed by Shri H.B. Lal.

2. By our judgment dated 21.9.2001 [see 2001" (3) JCR 296 (Jhr)], we had, inter alia, quashed and set aside the appointments of Mr. Rajeev Ranjan and Mr. Sachidanand Akhauri. as Chairman and Member of the Jharkhand State Electricity Board, respectively, and had directed the State to re-start the process for making fresh appointments on these posts. Whereas Mr. Sachidanand Akhauri has filed Civil Review No. 120 of 2001, the State of Jharkhand has filed Civil Review No. 110 of 2001. Mr. Rajeev Ranjan, however, has not filed any review application with respect to the aforesaid judgment in this Court, but has challenged the aforesaid judgment in the Supreme Court by filing SLP (Civil) No. 18514/2001.

3. When these Review Applications came up earlier we had made an observation on 8.1.2002 that these be adjourned for the time being because of the pendency of the aforesaid SLP in the Supreme Court. However, on 18.3.2002 when these again came up for consideration, the learned Advocate General, appearing for the State, and Mr. S.B. Gadodia, learned Senior Counsel appearing for the Review-petitioner Mr. Sachidanand Akhauri, drew our attention to the Supreme Court's order passed on 19.11.2001 and submitted that because of the aforesaid order we should hear these Review Applications. The learned Counsel for the petitioners also agreed with this and because of the joint submissions made by all three of them we decided to hear these two Review Applications.

4. The sole grievance of the Review-petitioner Mr. Sachidanand Akhauri, as projected before us in course of hearing today by his learned Counsel Mr. Gadodia, is that by the Judgment under review we have quashed and set aside the appointment of Mr. Akhauri as the Member of the Board without issuing notice to him and without affording any opportunity of hearing to him. Mr. Gadodia submits that, in fact, he was not even a party-respondent in the writ application and our passing the judgment and thereby quashing and setting aside his appointment has acted prejudicially and adversely to his interest and has resulted in miscarriage of justice. Mr. Gadodia submits that we should recall that part of our judgment in so far as it relates to the quashing and setting aside the appointment of Mr. Akhauri as the Member of the Board and by affording opportunity of hearing to him, re-hear the writ application to that limited extent, re-consider and re-examine all the relevant aspects relating to his appointment and re- decide the issue.

5. Mr. M.M.Banerjee, learned Advocate General appearing for the State, submits that the State would be satisfied if we adopt the aforesaid course of action as suggested by Mr. Gadodia and re-hear the writ application in so far as it relates to the quashing and setting aside the aforesaid two appointments of the Chairman and the Member of the Board, and if we would do so the State would not ask for any further relief in these Review Applications.

6. We do find that the Chairman and the Member of the Board, namely, Mr. Rajeev Ranjan and Mr. Sachidanand Akhauri were neither made party-respondents in the writ application nor were they issued any notices by us before we started to Decide the issue with respect to their appointment Para "28" of the judgment dated 24.9.2001, however, takes notice of our interlocutory order dated 7.3.2001, in which we had observed that any appointments made during the pendency of the writ application would be subject to the result of the writ application and, perhaps, taking a cue from the effect of aforesaid order we were of the view that because of the said order, there was no need to issue notices to these two persons".

7. On hearing the learned Counsel for the review petitioners today, however, we have been persuaded to appreciate the force and merit of their submission that, despite the aforesaid interlocutory order dated 7.3.2001 it. would have been a

safer course of action, more compatible with the observance of the principles of natural justice if we had issued notices to these two persons before starting the exercise and process of examining the correctness and validity of their appointments. It is indeed a moot question whether, in the light of the order dated 7.3.2001 technically speaking it was a mandatory requirement of law or not, but today we should have no hesitation in persuading ourselves to accept the argument of the learned Counsel for the review petitioners that between the two options available to us, the second option of calling these two persons and hearing them was the better one. To that extent, perhaps, it can be said that there does appear to be an error apparent on the face of our judgment.

8. The broad principles of review as contained in Section 114 of the CPC are applicable to proceedings under Article 226 of the Constitution. One crucial feature of review jurisdiction is the miscarriage of justice and the adverse result flowing therefrom. This miscarriage of Justice, if is based on an error apparent on the face of the record, becomes all the more vital facet of review Jurisdiction if the Court finds that the order passed by it suffered from these twin defects, namely miscarriage of justice and the same emanating from an error apparent on the face of the judgment. In such a situation we should have no hesitation in rectifying that error and thereby to review the judgment to that extent.

9. Learned Advocate General submits that the State would be satisfied if we hear the writ application to the only and limited extent of examining the validity of the aforesaid two appointments after issuing notices to the aforesaid two persons. In adopting this course of action, we do feel some technical difficulty. The difficulty is that only one of these two persons, namely, Mr. Sachidanand Akhouri has come up to us in his review application. The other person, namely, Mr. Rajeev Ranjan has not chosen to file any Review Application. In the light of the aforesaid facts and circumstances, in normal course, once we have decided to review the entire matter relating to the appointments, despite Mr. Rajeev Ranjan not having come up before us in review, we should have had no hesitation in issuing notice to him as well, because once we decide to re-hear the matter it would have been in fitness of things if we issued notices to both the appointees. The difficulty, however, in the present case is that Mr. Rajeev Ranjan has filed a SLP in the Supreme Court against our judgment dated 21.9.2001 and it is stated before us that their Lordships of the Supreme Court have passed an interim order maintaining status quo. We are not very sure, therefore, whether in these circumstances Mr. Rajeev Ranjan would like us to hear him or not. He may actually prefer his case to be heard by their Lordships of the Supreme Court. The best course of action in keeping with the learned Advocate General's submission, therefore, in view of this peculiar situation, would be to issue notice to him giving him the option and liberty of responding to the said notice before us and of participating in the Review proceedings, or else he may not like to respond to the notice at all, perhaps, because of his SLP pending in the Supreme Court. The option shall be entirely for him to exercise.

10. Coming to the impleadment application of Mr. H.B. Lal. after hearing Mr. Bimal Kumar, his learned Counsel, we find that since in our Judgment dated 21.9.2001 we had not passed any order adverse against Mr. H.B. Lal, nor had made any observation adverse against him, nor did that judgment act or operate adversely or prejudicially in any manner to his interest, no useful purpose shall be served by impleadment of Mr. H.B. Lal because in these proceedings he is neither a necessary nor a proper party. We are saying so more particularly because the hearing of the writ application de novo based on this order to the limited and only extent of examining the correctness of the two appointments has nothing to do with Mr. H.B. Lal in any manner. When the proceedings in the writ application commenced the situation might have been different, but during its pendency it got altered by the appointment of these two persons. The impleadment application, therefore, has no merit. It is, accordingly, dismissed.

11. For the foregoing reasons, therefore, we allow these two Review Applications and recall our judgment dated 21.9.2001 passed in C.W.J.C. No. 924 of 2001 [see 2001 (3) JCR 296 (Jhr)] to the only and limited extent as indicated hereinabove. The writ application shall be re-heard to the only and aforesaid limited extent on 3.5.2002.

12. Within three weeks from today the State as well as Mr. Sachidanand Akhauri may file counter-affidavits in the aforesaid writ application. In these counter-affidavits, supported by whatever records or-documents that the deponents may like to file, it shall be open to the deponents to place such facts and such materials before us as would justify the appointments made.

13. We direct the Registrar-General of this Court to issue a notice to Mr. Rajeev Ranjan. Chairman, Jharkhand State Electricity Board, to the effect that if he likes, despite the pendency of his SLP (being SLP (Civil) No. 18514 of 2001), to participate in the re-hearing of the writ application, he may choose to appear and participate in the proceedings. If he does choose to appear and participate in the proceedings he shall also in that event file his counter- affidavit on the lines as are applicable to the other two parties. In that event Mr. Rajeev Ranjan may file his counter- affidavit also within three weeks from the date of service of the notice upon him. Along with the notice to Mr. Rajeev Ranjan A copy of this order shall also be sent to him.

14. Both the Review Applications are, accordingly, allowed. No order as to costs.

15. Let the writ applications (C.W.J.C. No. 924 of 2001) appear on 3.5.2001.