
(2004) 02 JH CK 0056

In the Jharkhand High Court

Case No : Writ Petition (C) No. 297 of 2004

State of Jharkhand

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 47
Constitution of India, 1950 — Article 131, 139, 139A

Citation : (2004) 2 JCR 183

Hon'ble Judges : P.K. Balasubramanyan, C.J.;Tapen Sen, J

Bench : Division Bench

Advocate : Siddharth Shankar Ray, Debi Pal, K.B. Sinha, Delip Jerath and S.N. Prasad, for the Appellant; Ram Balak Mahato Mihir Kumar Jha, P.K. Prasad, Ajit Kumar and A. Allam, for the Respondent

Judgement

P.K. Balasubramanyan, C.J.—This petition is filed on behalf of respondent No. 6 in the writ petition, the Secretary at the registered office of the Tenughat Vidyut Nigam Limited, Vidyut Bhavan, Patna, praying for an adjournment of the writ petition and the analogous writ petition, W.P.(C) No. 1542 of 2003. W.P.(C) No. 1542 of 2003 was filed first in this Court by the Tenughat Vidyut Nigam Limited, through its Managing Director said to be located in Ranchi in the State of Jharkhand for the issue of a writ of mandamus directing the respondents, including the State of Bihar and what is called the parallel Tenughat Vidyut Nigam Limited, Bailey Road, Patna, to hand over the entire documents, articles and office records concerning the company. Tenughat Vidyut Nigam Limited. The company was one registered, when the State of Jharkhand was not separated from the State of Bihar under the Bihar Reorganisation Act 2000, and the registered office of the company was at Patna, the then capital of the State. It was a generating company and the undertaking or the generating station was located in an area which has subsequently come to the State of Jharkhand. There were claims and counter-claims by the two States for the ownership over the Tenughat Vidyut Nigam Limited. The Governor of Jharkhand issued a notification

in terms of Section 47 of the Bihar Reorganisation Act, 2000. The dispute was taken to the Central Government and the Central Government passed an order holding that the assets belonged to the State of Jharkhand. The position thus emerged that whereas the undertaking and all the activities of the company registered under the Companies Act fell within the State of Jharkhand, the registered office of the company alone remained in Patna, the capital of the reorganised State of Bihar. Challenging the order of the Central Government recognising the right of the State of Jharkhand, a writ petition was filed in the High Court at Patna and the same is pending. Meanwhile, W.P.(C) No. 1542 of 2003 was filed complaining that the Head Office at Patna was not handing over the documents relating to the business of the undertaking and in the light of the provisions of the Bihar Reorganisation Act, 2000, the notification of the Jharkhand Governor and the decision of the Central Government, the Head Office and the State of Bihar were liable to be compelled to hand over all the documents and other assets to the Tenuhat Vidyut Nigam Limited, with its Head Office at Ranchi in the State of Jharkhand. Subsequently, the State of Jharkhand itself filed W.P.(C) No. 297 of 2004 praying for a declaration that the Tenuhat Vidyut Nigam Limited has automatically become part and parcel of the State of Jharkhand, in view of the Bihar Reorganisation Act, 2000 and for other reliefs including the issue of a direction to the State of Bihar and the Registered Office at Patna to act in compliance with the Central Government Notification issued in that behalf.

2. These writ petitions had been referred to the Division Bench by a learned Single Judge, considering the importance of the questions, which according to him, arose for a decision. The matter had come up before us on 21.1.2004, when on behalf of the State of Jharkhand, prayer was made for the issue of an interim direction to permit the Tenuhat Vidyut Nigam Limited at Ranchi, Jharkhand, to inspect all the documents in the Head Office at Patna and to permit it to take photocopies of the documents at the expense of the Nigam at Ranchi. On behalf of the Head Office and the State of Bihar, time was sought for on the ground that the Senior Counsel appearing on behalf of the respondent was not well and the matter may be adjourned. An objection was also taken that no formal application for an interim relief had been made by the State of Jharkhand. By order of even date, we had adjourned the matter to this date for consideration of the entire matter and if that was not possible, at least, the prayer for interim relief made. Possibly to get over the objection of the absence of the formal application in that behalf, the State of Jharkhand has filed I.A. No. 325 of 2004 praying for an interim direction on the lines above referred to regarding the inspection and taking of photocopies of the documents at the Head Office at Patna.

3. Today, when the matter came up, the above application praying for an adjournment was moved on behalf of the Head Office of the Nigam on the ground that an application has been made by the Nigam before the Supreme Court under Article 139A of the Constitution of India, praying for transfer of the writ petition filed by the Head Office of Nigam in the Patna High Court and the

two writ petitions pending in this Court to the Supreme Court and that an application for an interim stay of the proceedings in this Court has also been made. The further plea was that an interstate dispute has arisen between the State of Jharkhand and the State of Bihar and in view of this, the State of Bihar, a respondent in the writ petition, had filed a suit in the Supreme Court invoking Article 131 of the Constitution of India, praying, inter alia, for a declaration that the notification issued by the Nigam as an undertaking of the Government of Jharkhand was null and void; for a declaration that the State of Jharkhand was not entitled to claim the ownership of the Nigam by virtue of the Bihar Reorganisation Act, 2000; for setting aside the order of the Government of India recognising the right of the State of Jharkhand over the Nigam and for other incidental reliefs. It is submitted that the suit was filed on 23.2.2004 and that there had been no adequate time to move the matter and get an appropriate interim order therein and in this situation, now that the matter is brought within seisin of the Supreme Court, this Court should stay its hands and adjourn the proceeding to await the orders of the Supreme Court.

4. On behalf of the State of Jharkhand and on behalf of the Nigam at Ranchi, learned senior counsel contended that the move before the Supreme Court was made belatedly without bona fides and Just to over-reach any interim order that may be passed by this Court in the writ petitions pending in this Court and in this situation, the prayer for adjournment should be ignored and I.A. No. 325 of 2004 should be considered and appropriate orders passed. In view of the heat and dust raised during vehement arguments, we thought it appropriate to hear arguments both on the application for adjournment of the proceedings and also on the application, I.A. No. 325 of 2004 filed by the State of Jharkhand for an interim direction regarding the inspection of the documents and taking ,of photostat copies and we reserved the order on both.

5. It is true that the approach was made to the Supreme Court by the State of Bihar just two days before the matter was to be taken up in this Court and the interim prayer considered. But the fact remains that the Supreme Court has been approached by the State of Bihar regarding the subject that is, the subject matter of the present writ petition. May be, the approach to the Supreme Court by the Head Office of the Nigam at Patna for transfer of the writ petitions to the Supreme Court could also be said to be somewhat belated, since these matters had been pending here for quite some time. It is also true that so long as no orders are passed by the Supreme Court either staying the proceedings before us or directing us to desist from dealing with the interlocutory prayer made on behalf of the State of Jharkhand, we may not be found out of the order if we heard the interlocutory application in the writ petition and passed an appropriate order thereon. But at the same time, we think that it is not proper for us to ignore the fact that the matter has been taken up before the Supreme Court and that Court is yet to consider the matter. In such a situation, we think that it will be appropriate to keep in abeyance the passing of the order in I.A. No. 325 of 2004. the application made for interim relief by the Nigam at Ranchi. It is one

thing to say that there is no bar on this Court in passing an Interim order, here and now, if a case is made out in that behalf, but it is quite another thing to say that it will be appropriate for this Court at least to wait for a little time so as to give the State of Bihar and the Head Office of the Nigam at Patna time to move the Supreme Court seeking an order regarding the matters pending in this Court. In that context, we think that it will be proper (sic) I.A. No. 325 of 2004, the application for interim relief made by the State of Jharkhand and adjourn the passing of an order thereon, subject to any order that may be passed by the Supreme Court, to a date after fifteen days from today. In that view, we adjourn LA. No. 325 of 2004 for pronouncement of the order (we have already heard the arguments) to 16.3.2004. It will be for the State of Bihar and/or for the Head Office of the Nigam at Patna to bring to our notice the factum of passing -of any order by the Supreme Court regarding the interlocutory application above referred to. In case, such information is not furnished to this Court by filing an affidavit in that behalf and bringing it to the notice of this Court at the mentioning time, orders will be pronounced on I.A. No. 325 of 2004 on 16.3.2004.