
(2009) 01 OHC CK 0064
In the Orissa High Court

Steel Authority of India Ltd.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Contract Act, 1872 — Section 15

Citation : AIR 2009 Ori 124 : (2009) 107 CLT 430 : (2009) 1 OLR 662 : (2011) 7 RCR(Civil) 1524

Hon'ble Judges : B.S. Chauhan, C.J;S.C. Parija, J;I. Mahanty, J

Bench : Full Bench

Judgement

I. Mahanty, J.—The Petitioner namely, Steel Authority of India Limited (Raw Material Division)(hereinafter described as "SAIL(RMD)" filed the writ applications, inter alia, seeking to challenge the Orissa Act 3 of 1994 by which amendment was inserted in the Orissa Irrigation Act, 1959 and Orissa Irrigation (Amendment) Rules, 1994 and further praying to declare the same to be invalid and unconstitutional on the ground of repugnancy and in competency of the State Legislature and as a colourable piece of legislation and/or declare the schedule of rates prescribed under the Rule 23-A to be arbitrary, irrational and confiscatory and with a further prayer to seek refund of Rs. 44,092 which was illegally collected from the Petitioner.

2. When the matter came up for hearing on 6.1.2009, the following order was passed:

The Writ Petition has been filed in 1996 and since then the matter is pending in this Court. However, we have gone through the Writ Petition. It does not disclose anywhere, that there is any existing legal right in favour of the Petitioner and it is being threatened or violated by any act of the Opposite Parties. There is no order passed by the Opposite Parties, which has created any cause of action for the Petitioner. No cause of action has been disclosed nor it has been stated that any cause of action had arisen requiring the Petitioner to approach this Court. There is no pleading to show as to how the Petitioner could be aggrieved by any action

or inaction of the Opposite Parties.

A Writ Petition must contain pleadings disclosing all facts showing the rights in favour of the Petitioner. Further it must disclose as how the cause of action had arisen and any action or order passed by the Opposite Parties has created any hindrance in the rights of the Petitioner for the simple reason that it is not like a plaint where in a Civil Court the parties can be summoned to examine and cross-examine to find out the facts. In *Bharat Singh and Others Vs. State of Haryana and Others*, , the Apex Court has explained that if any of the aforesaid ingredients in a Writ Petition is missing, the Court should not entertain the Writ Petition which is to be dismissed as not maintainable. The observations made by the Apex Court are as follows:

....In our opinion, when a point which is ostensibly a point of law is required to be substantiated by fact, the party raising the point, if he is the Writ Petitioner, must plead and prove such facts by evidence which must appear from the Writ Petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the Writ Petition or to the counter affidavit, as the case may be the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a Writ Petition or a counter affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a Writ Petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it....

The aforesaid Judgment has been consistently followed by the Apex Court till to-day. In *Ram Krishna Verma and Others Vs. State of U.P. and Others*, placing reliance on its earlier Judgment in *Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others*, , the Apex Court has held that in case the Court has granted a stay order in a petition which is subsequently found to be having no merit, it has a duty to neutralize the said unfair advantage granted to the Petitioner. In that view of the matter, we are of the view that the petition in the manner it has been filed and in the absence of proper pleadings taken therein is not maintainable and is liable to be dismissed without entertaining any further. More so, it becomes the duty of the Court to neutralize the benefit of interim order passed by this Court.

At this juncture, Mr. J.Das, Learned Senior Counsel appearing for the Petitioner wants to examine the matter and make his further submission.

List this matter on 13.1.2009 for further orders.

3. Pursuant to the Order Dated 6.1.2009 the Petitioner-SAIL (RMD) filed an application for amendment, which has been registered as Misc. Case No. 25 of 2009 whereby the Petitioner-SAIL(RMD) has sought to incorporate the following amendment to the writ application, which are as follows:

4(A) That the mining lease relating to Bolani Ores Mines was executed on 11.4.1960 between the Governor of Orissa and the erstwhile Bolani Ores Limited, for a period of 30 years. This was ultimately transferred to the Steel Authority of India Limited in the year 1978, as per the Central Act 42 of 1978, namely the Bolani Ores Limited (Acquisition of shares) and Miscellaneous Provisions Act, 1978. Accordingly, the Petitioner became the lessee in respect of the said Mines. Prior to this, another Central Act, namely, "The Public Sector Iron and Steel Companies (Restructuring) and Miscellaneous Provisions Act, 1978" (Act No. 16 of 78) was enacted; as a result thereof, the existing Iron and steel companies in the Public Sector were merged with the Petitioner Company which included the Rourkela Steel Plant.

4(B) That the lease relating to Bolani Ores Mines expired on 10.4.1990 and the Petitioner applied for renewal of the said lease on 7.4.1989, i.e., before 12 months of its expiry as envisaged under Rule 24-A of M.C. Rules; 1960. The renewal sought was the first renewal to which the Petitioner was entitled to as a matter of right under Rule 24-8 of the M.C. Rules, for using the minerals in its own industry. In the meantime, the Mineral Conservation and Development Rules, 1988 came into force, replacing the old Rule of 1958. It is quite likely that the grant of renewal was delayed for clearance on account of the new Rule. However, the renewal application of the Petitioner was kept pending and was not rejected in accordance with Rule-26 of M.C. Rules, 1960. During pendency of renewal the Petitioner continued to operate the mines and the Opposite Party No. 1 had been granting working permissions from time to time and was getting the requisite royalty from the Petitioner.

Under the provisions of Rule 24-A(6), the said application for renewal being within time and not disposed of by the State Government before the date of expiry of lease, the period of that lease deemed to have been extended by a further period till the State Government passes order thereon. After getting clearance the lease was renewed by a fresh lease executed on 11.3.2002 and registered on 16.5.2002. The Xerox copy of some of the working permissions issued by the Opposite Party No. 1 during pendency of the renewal application are filed herewith and marked as Annexure-1/A. The Xerox copies of the relevant pages (Pg. 1 to 100 out of 555 pages) of the lease deed dated 11.3.2002 are filed herewith as Annexure-1 /B. The terms and conditions of the renewed lease deed are similar. Hence, the Petitioner had the subsisting right as a lessee during pendency of renewal application when this Writ Petition was filed in the year 1996.

4(C) That the grievance of the Petitioner arose when by misusing the State Power, the Opposite Party No. 2 compelled the Petitioner to execute the agreement under the provisions of Orissa Irrigation, 1959 on 17.11.1991 (Annexure-1) and to pay the illegal water charges even though the aforesaid Act was not applicable for use of water from non-irrigation works like natural stream and river and subsequently, when Opposite Party No. 2 demanded larger amount

by applying the new rate of Rs. 200 as per Annexure-2 dated 2.2.1995. It is submitted that the parent Act of 1959 as well as the impugned Amending Act, 1993 (Act 3 of 1994) are in applicable to mining establishment of the Petitioner for the reasons elaborated hereinafter in the grounds of the Writ Petition.

4. When the matter came up for hearing, Mr. J. Das, Learned Senior Counsel appearing for the Petitioner-SAIL (RMD) was asked to indicate from the pleadings, the existing legal right, if any, in favour of the Petitioner which has been threatened or violated by any act of the Opposite Parties. In response to the aforesaid query, Mr. Das drew our attention to paragraph-4 of the Writ Petition, which is quoted hereunder:

4. That the grievance of the Petitioner is that the Opposite Parties have been illegally collecting water charges from the Petitioner for lifting water from River Karo by laying pipe lines and installing pumps as its own cost. The said river is not an irrigation work nor falls within the meaning of any reservoirs, tanks, anikats, or dams. Therefore, use and consumption of water from a flowing river is not exigible to any water rate or water charges. However, under compelling circumstances, the Petitioner was coerced to pay the water charges at the rate of Rs. 20 for 1 lakh gallon of water taken from the said river Karo and the Petitioner paid the same under protest by entering into an agreement on 17.11.91 under compelling situation. A Xerox copy of it, is filed herein as Annexure-1.

5. From the aforesaid pleading it is clear that the Petitioner-SAIL (RMD) had entered into an agreement with the State Government on 17.11.1991, which has been annexed as Annexure-1 to the Writ Petition. It is most important to note here that validity of such agreement has not been questioned/nor challenged in the present Writ Petition although it has been pleaded that the Petitioner SAIL (RMD) under compelling circumstances was "coerced" to pay the water charges in terms of the agreement. Learned Counsel for the Petitioner fairly admitted that the Petitioner-SAIL (RMD) has not sought to challenge the validity of such agreement in present proceeding but claims to have been forced to file Writ Petition, seeking to challenge the 1994 amendment to the Orissa Irrigation Act and Rules, since the water rate was enhanced from Rs. 20 to Rs. 200 for one lakh gallon of water. In essence the ground of challenge apparently is that enhancement of water rate from Rs. 20 to Rs. 200 for one lakh gallon of water was irrational and arbitrary. This contention of the Petitioner-SAIL (RMD) finds mentioned in Ground No. 16, which is quoted herein below:

16. For that even if the impugned amendment is sustainable, it is submitted that the rate at Rs. 200 would not be applicable to the Petitioner. For, after the water used in mining operation are thrown back to the River Karo unpolluted. If at all any licence fee would be legally payable it would be at the rate of Rs. 50 per one lakh gallon and not Rs. 200 as has been illegally assessed and demanded.

6. Mr. J.M.Mohanty, Learned Government Advocate appearing for the Opposite Parties-State on the other hand drew our attention to the agreement dated

17.11.1991 entered by the State Government with the Petitioner-SAIL (RMD) and in particular the contents of paragraphs-1, 4(iv) and 5, which are quoted below for reference:

1. In pursuance of the said Agreement and in consideration of supply of water to be made to the Applicant, the applicant and the sureties hereby jointly and severally covenant with the Governor as follows:

a) The applicant shall pay water charges for the water actually consumed as per the provisions of Orissa Irrigation Act, 1959 and Rule made thereunder on or before 31st March every year.

b) The Applicant shall make suitable arrangement to take the water from the point at which it will be supplied.

c) The Applicant shall not use the water supplied to him for any purpose other than that which is covered by this Agreement.

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4. (iv) The permission granted shall not be deemed to exempt the applicant from liability to payment of water charges lawfully assessable.

5. Water charges shall be levied on the Applicant at the rate of Rs. 20 per one lakh gallons of water so drawn by him or at such rates as may be prescribed by Governor from time to time which shall be binding on the applicant. In case of unauthorized use of water by the applicant a penalty shall be charged having regard to the volume of water used and the benefit produced by such use at a rate not exceeding six times the bulk water rate fixed.

7. Relying on the aforesaid clauses, Learned Government Advocate submits that in terms of the aforesaid agreement which continue to be valid, the Petitioner-SAIL (RMD) is liable to pay water rate for "supply of water from Fiver Karo" and that the Petitioner was liable to pay such water charges for the water actually consumed in terms of the provisions of Orissa Irrigation Act, 1959 and rules made thereunder. Apart from that, Learned Counsel further submits that such permission for taking supply of water has been granted in favour of the Petitioner by the State did not exempt the Petitioner from any liability to pay water charges lawfully assessable and more importantly under Clause-5 of the agreement the Petitioner-SAIL (RMD) was required to pay water charges at the rate of Rs. 20 per one lakh gallon of water drawn by it or at such rates as may be prescribed by the Governor from time to time which is binding on the applicant. Learned Counsel further submits that this water rate has been revised in the schedule to the Orissa Irrigation Act by amendment carried out in the year 1994 and in terms of Clause 5 of the agreement, the Petitioner-SAIL (RMD) was liable to pay such enhanced charges which have been duly approved by the Governor.

8. Mr. Das, Learned Senior Counsel appearing for the Petitioner raised various contentions regarding constitutional validity of the Orissa Act No. 3 of 1994 (The

Orissa Irrigation (Amendment) Act, 1993) and submitted that the use of water from a natural stream for mining purpose was covered under the MMRD Act, 1957 and hence the State has been denuded of its legislative power from causing any levy for use of the water. It is further contended that since the use of water in mining operation was also covered by another Central Act namely, Water (Prevention & Control of Pollution Cess) Act, 1977 as well the Petitioner claimed to have an indefeasible riparian legal right under Indian Easement Act, 1882. It is also submitted that river Karo from which water has been drawn by the Petitioner Company for its use is an inter-State river and the said river was covered by River Board Act, 1956 and the State was denuded of its legislative power.

9. In the light of the contention as noted hereinabove, we find that in the aforesaid two connected Writ Petitions where O.J.C. No. 675 of 1996 relates to Bolani Ores Mines and O.J.C. No. 4568 of 1996 relates to Kiriburu Iron ore Mines, both are owned and operated by the Petitioner-SAIL (RMD). In both the cases common question of fact and law have been pleaded and hence both are taken up together for final disposal.

10. Although various contentions have been raised regarding validity of the 1994 Amendment to the Orissa Irrigation Act and Rules yet, before we proceed any further we need to first deal with the question of maintainability of the present Writ Petition. We find from the prayer made in the Writ Petition that no relief has been sought for against the alleged agreement entered between the Petitioner and the State Government under Annexure-1 to the Writ Petition by which the parties thereto are bound by the terms and conditions of such agreement. We further find from the terms of the agreement between the parties that not only the Petitioner committed itself to pay water charges at the rate of Rs. 20 for one lakh gallon of water but also in terms of clause-5 thereof, it also agreed to any possible enhancement made to such rate. We further find that although a prayer has been made for seeking refund of certain amount of money deposited by it as water charges, no demand for such an amount has been annexed to the application. Therefore, we are of the view that no cause of action has arisen justifying the Petitioner to approach this Court.

11. It is now well settled in law, that a Writ Petition must contain all necessary pleadings disclosing all facts and the rights in favour of the Petitioner. Further it must disclose as to when and how the cause of action had arisen and any action or order passed by the Opposite Parties which has created any hindrance to the rights of the Petitioner for the simple reason that Writ Petition is not like a plaint before a Civil Court where the parties could be summoned to examine and cross-examine to find the fact. Accordingly it has been consistently held by the Hon'ble Supreme Court that if the aforesaid particulars are not disclosed, the Court should not entertain the Writ Petition and the same is to be dismissed at the threshold.

In *Bharat Singh (supra)* the Hon'ble Apex Court held that when a point of law is

required to be substantiated by fact, the party raising the point, if he is the Writ Petitioner, must plead and prove such facts by evidence which must appear in the Writ Petition and if such fact is not pleaded or necessary evidence in support of the fact is not annexed to the Writ Petition, the Court should not entertain such a Writ Petition.

12. Similar view has been reiterated in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, ; *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, ; *Ram Narain Arora Vs. Asha Rani and Others*, ; *State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.*, .

In *M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh*, , the Apex Court observed as under:

The findings in the absence of necessary pleadings and supporting evidence, cannot be sustained in law.

Similar view has been reiterated in *Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors.* (2003) 1 SCC 18; *Devasahayam (D) by LRs. Vs. P. Savithramma and Others*, ; and *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, .

13. It would be pertinent to note here that while the Petitioner-Company has pleaded that certain compelling circumstances existed for which the Petitioner-SAIL (RMD) was "coerced" to sign the agreement with State under Annexure-1 to the Writ Petition, no details of such alleged compelling circumstances nor coercion has been stated in the Writ Petition. In Indian Contract Act, 1872 the term "coercion" has defined u/s 15 and in the event a contract has been obtained by coercion, such contract is "voidable" at the option of the applicant. Accordingly, in the event the Petitioner-SAIL (RMD) seeks to absolve itself from the rights and obligations that flow from the agreement, the proper forum for such adjudication would only be the civil Court having competent jurisdiction over the matter.

14. In view of the conclusion already arrived by us hereinabove that the present Writ Petition is not maintainable, we are further of the view that the Writ Petition does not disclose any cause of action for approaching the Writ Court nor has the Petitioner annexed or challenged any impugned order by which it may be adversely affected. In such a fact situation, the question raised in the order of reference dated 6.3.2003 does not arise for consideration in so far as the present cases are concerned.

15. However, considering the fact that in the present case the Petitioner-SAIL (RMD) is a Government of India enterprise and the dispute relates to the agreement entered into by it with the State Government of Orissa, in view of the Judgment rendered by the Hon'ble Supreme Court in the case of *Oil and Natural Gas Corporation Ltd. Vs. City and Indust. Dev. Corpn., Maharashtra and Others*, and since the nature of controversy is a recurring feature, the matter is required

to be referred to the High Power Committee to be constituted by the Cabinet Secretary, Union of India. For that purpose in case the Petitioner makes proper representation, we request the Learned Cabinet Secretary to constitute a High Power Committee consisting of officers of the Union of India and State of Orissa, which may resolve the controversy in the matter regarding enhancement of water rate expeditiously.

16. With the aforesaid observations, both the Writ Petitions stand disposed of. Interim orders, if any, stand vacated.

B.S. Chauhan, C.J. I agree.

S.C. Parija, J.

I agree.