

(2001) 02 JH CK 0051
In the Jharkhand High Court
Case No : L.P.A. No. 72 of 2001

Union of India

APPELLANT

Vs

B. Akala and Others

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Citation : (2001) 02 JH CK 0051

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Mukul Rohatgi and N.N. Sinha, for the Appellant; A.K. Sinha and D.K. Bharau, for the Respondent

Final Decision : Allowed

Judgement

1. This is the second round of litigation for these parties, CWJC No. 4300/2000 was filed by respondent No. 1 Sri B. Akala challenging inter alia the appointment of one Sri C.D. Arha, as officiating Chairman-cum-Managing Director (CMD). Coal India Ltd. (CIL). On 20th December, 2000, a learned Single Judge of this Court disposed of the aforesaid writ petition (CWJC No. 4300/2000) by making certain observations about the court not having any jurisdiction for issuing any directions about appointing writ petitioner-respondent No. 1 as CMD, CIL, even though he did observe and directed that, when the selection process for appointment to the post of CMD, CIL is initiated, it would be desirable that the respondent Union of India should fill up the post expeditiously. Apparently, since respondent No. 1 did not get the relief in the aforesaid writ petition that he had prayed for, he came up in appeal against the aforesaid order by filing LPA No. 16/2001. This appeal was disposed of by the Division Bench on 7.2.2001 by passing the following order :

"Mr. Mukul Rohatgi, learned Additional Solicitor General of India, appearing on behalf of the respondents has made a statement before us that the proposal with regard to appointment of the appellant as Chairman, Coal India Ltd. is pending consideration before the Appointing Committee of Union Cabinet and that no final decision, this way or the other, has been taken by the ACC. He submitted that

the appellant, therefore, has no cause of reason to come up at this stage and the writ petition filed by the appellant was premature.

Mr. Verghese, learned Sr. counsel appearing for the appellant on the basis of the aforesaid statement of the learned Additional Solicitor General of India wants to withdraw the appeal with liberty to approach this Court again, if a fresh cause of action accrues to his client.

Based on the aforesaid statement and submissions of the learned counsel of the parties, we dispose of this appeal as having been withdrawn with a direction to the Secretary, Department of Personnel. Government of India, to expedite the aforesaid consideration process."

2. What gave rise to the present round of litigation is the issuance of the order on 14.2.2001 whereby respondent No. 4 Sri N.K. Sharma has been entrusted with the officiating/acting charge of the post of CMD. CIL in addition to performing his own duties as Director (Technical) CIL, with immediate effect till regular appointment to the post of CMD. CIL, is made. In this second round, respondent No. 1 challenged this order by filing a fresh writ petition, being CWJC No. 733/2001. Learned Single Judge vide order under challenge in this appeal, passed on 20.2.2001 has stayed the operation of the aforesaid impugned order dated 14.2.2001 and directed that Shri C.D. Arha, who was earlier acting as CMD shall continue to act as such. It is noteworthy to mention here that respondent No. 4 had on 14.2.2001 assumed and taken over the charge from Shri C.D. Arha who had relinquished his charge on that date.

3. When LPA No. 16/2001 was disposed of on 7.2.2001 by the Division Bench, Shri C.D. Arha was officiating as CMD, CIL, and the proposal with regard to the regular appointment of CMD, CIL, on substantive basis was still under consideration of the Central Government. At that stage the Division bench, therefore, did not grant any relief to respondent No. 1 (who was appellant in LPA No. 10/2001) because it did not consider it proper to interfere in any arrangement whereby a person was merely officiating as CMD, which was purely temporary arrangement. The situation has not changed a bit since then. Whereas on 7.2.2001 Sri C.D. Arha was officiating as CMD, CIL, vide order dated 14.2.2001 he has been replaced by respondent No. 4. Why has this replacement been necessitated has been explained by the appellant. Various factors have been cited in support of the reason for such substitution, one of these being the recent mishap in a mine in Bagdigi where about 30 people lost their lives. At this stage, we need not go into these reasons or the factors constituting the gravamen of the explanation because neither are these relevant nor do we wish to prejudice or influence the final outcome of the selection procedure. The fact remains that at this stage, with respect to a simple officiating arrangement which is purely temporary in nature, respondent No. 1 cannot have any legitimate grievance. His concern should be about his grievance with respect to his claim for regular appointment on substantive basis. In the totality of the circumstances, therefore, and the basic fact that no change has occurred between 7th Feb.,

when LPA 16/2001 was disposed of and 14th Feb., when respondent No. 4 was entrusted with the task of officiating as CMD, CIL the passing of the order dated 14.2.2001, in our mind, docs not give rise to any fresh cause of action as far as respondent No. 1 is concerned. The thrust of the order dated 7.2.2001 while disposing of LPA No. 16/2001 was that the proposal for appointment to the post of CMD, CIL, on regular substantive basis was under the consideration of the Appointment Committee of the Cabinet. Govt. of India and based on the statement made by the learned Addl. Solicitor General, Govt. of India in the Court, respondent No. 1 had withdrawn his appeal The situation since then has not undergone any change as far as the rights and obligations of the parties with respect to the regular appointment on substantive basis to the post of CMD, CIL, are concerned. In our opinion, therefore, learned Single Judge fell in error in passing the order under challenge in this appeal. The order dated 20.2.2001 passed in CWJC No. 733/2001 is accordingly set aside with all consequences. The appeal is allowed.

4. Before parting, we do wish to express our grave concern with respect to unnecessary and avoidable delay that has been occurring because of the non-filling up of the post of CMD. CIL, on regular substantive basis. There has been inordinate and unexplained delay on the part of the Govt. of India in filling up of this post despite the fact that the last regular incumbent retired sometime in October last year. An important public sector undertaking like Coal India Ltd. having widespread operations throughout the country and employing lakhs of people has been without a regular CMD on substantive basis for almost six months now. Had the Govt. of India taken care to ensure that the post is filled up on regular substantive basis, this avoidable round after round of litigation, perhaps, could not have taken place. We, therefore, have no hesitation, under the aforesaid circumstances, in observing and directing that appellant shall ensure that steps are taken to conclude the selection process and orders are issued for appointment on the post of CMD, CIL, on regular substantive basis within a period of five weeks from today. We must appreciate that the learned Addl. Solicitor General of India is in agreement with our aforesaid observation and direction and has, in fact, assured us that the appellant indeed shall take all steps to ensure that this direction is carried out in letter and spirit.

With the aforesaid observation and direction, the appeal is disposed of. No order as to costs.

5. Appeal allowed.