(2005) 01 KL CK 0040

In the High Court Of Kerala

Case No : W.A. No. 1202 of 2004 (A)

Union of India APPELLANT

Vs

High Range Estate Labour Union RESPONDENT

Date of Decision : 10-01-2005

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 18A, 18B
Tea Act, 1953 — Section 16C, 16D

Citation : AIR 2005 Ker 122 : (2005) 1 ILR (Ker) 259 : (2005) 1 KLJ 262 : (2005) 1 KLT 507

Hon'ble Judges : B. Subhashan Reddy, C.J;A.K. Basheer, J

Bench : Division Bench

Advocate : V.T. Gopalan and K.M. Jamaludheen ACGSC and Devan Ramachandran, for the Appellant; P. Ramakrishnan, for the Respondent

Judgement

B. Subhashan Reddy, C.J.—These writ appeals are preferred against the order of the learned Single Judge in a matter arising under the Tea Act. W.A. No. 1202/2004 is filed by the Union of India whereas W.A. No. 1334/2004 is filed by one of the promotees. At this stage, all the learned counsel have requested the Court to hear and dispose of the writ appeals themselves which lies in a narrow compass. For the sake of convenience, facts are being taken from W.A. 1202/2004. Only one argument has been advanced by Sri. V.T. Gopalan, learned Additional Solicitor General of India pointing out the imposition made by the learned Single Judge in his order of 5th January 2004 in O.P. No. 32613/2002, which is to the following effect: "If the revival of the functioning of High Range Tea Estates of M/s. Ram Bahadur Thakur Ltd., is not possible, then the Union of India shall take over such estates of the said Company as contemplated by law within six months from the said date of judgment." Mr. V.T. Gopalan submits that taking over of any tea estate or company under the Tea Act, 1953 is governed by Section 16D thereof and reading of the said Section cannot connote commanding the Central Government to take over any tea estate per force. Section 16D reads thus:

16D. Power of Central Government to assume management or control of tea undertaking or tea unit in certain cases:- (1) If the Central Government is of opinion that-

(a) a tea undertaking or tea unit to which directions have been issued in pursuance of section 16C has failed to comply with such directions, or the tea undertaking, or as the case may be, the tea unit, has made losses in three out of five years immediately preceding the year in which such opinion is formed; or

(b) the average yield of the tea undertaking or, as the case may be, the tea unit, during three years out of five years immediately preceding the year in which such opinion is formed, has been lower than the district average yield by twenty five per cent or more; or

(c) the persons owning the tea undertaking, or, as the case may be, the tea unit, have habitually made default in the payment of wages, or provident fund dues of workers and other employees, or rent of the land, or duties of excise, or in the payment of such other dues as are obligatory under any law for the time being in force; or

(d) the undertaking or, as the case may be the tea unit, is being managed in a manner highly detrimental to the tea industry or to public interest.

The Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the tea undertaking or tea unit, as the case may be or to exercise in respect of the whole or any part of the tea undertaking, or as the case may be, tea unit, such functions of control as may be specified in the order.

(2) Any notified order issued under sub-section (i) shall have effect for such period, not exceeding five years, as may be specified in the order:

Provided that if the Central Government is of opinion that it is expedient in the public interest that any such notified order should continue to have effect after the expiry of the period of five years aforesaid, it may from time to time issue directions for such continuance for such period, not exceeding one year at a time, as may be specified in the direction, so, however, that the total period of such continuance (after the expiry of the said period of five years) does not exceed six years; and where any such direction is issued a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

(3) Any notified order issued under sub-section (1) shall have the same effect as if it were an order made under sub-section (1) of Section 18A of the Industries (Development and Regulation) Act, 1951 and the provisions of section 18B of that Act shall apply accordingly.

(4) Notwithstanding anything contained in any law for the time being in force, no person, who ceases to hold any office by reason of the provisions contained in clause (a), or whose contract of management is terminated by reason of the

provisions contained in clause (b) of section 18B of the Industries (Development and Regulation) Act, 1951 as applicable to a tea undertaking or tea unit by virtue of the provisions of sub-section (3) shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management;

Provided that nothing contained in this section shall affect the right of any such person to recover from the tea undertaking or the tea unit, as the case may be, monies recoverable otherwise than by way of such compensation.

2. In the instant case, the above tea company is due an amount of Rs. 16 crores to the Syndicate Bank and Rs. 15 crores for non-contribution of provident fund to the worker''s benefit. This lapse comes within clause (c) of sub-section (1) of Section 16D extracted above. The Central Government is invested with a right to take over the above tea company, but, there cannot be any imposition on the Central Government to take over the above tea company per force for the reason that the above provision is an enabling provision. If the Central Government is of the opinion that the above tea company can be taken over as the company is financially viable and feasible, it can do so, but, no imposition can be made to take over the management of the above tea company in spite of the fact that the Central Government is not willing to take over. It is not that the Central Government has taken a decision not to take over the management of the above tea company without any basis. From the affidavit which is filed before us pursuant to the directions of this Court, it is very clear that all efforts have been made by the Central Government to see as to whether the directions of this Court can be complied with by taking over the management and for that purpose two sub-committees were constituted to study the nine tea units. Both the sub-committee had submitted their reports in the negative and the Central Government had applied its mind to the said reports and came to the conclusion that it is not at all financially viable or feasible to assume management of the above company. If that be so, there cannot any imposition to take over the tea company. Hence, we set aside the direction of the learned Single Judge in imposing upon the Central Government to take over the 3rd respondent-Company. Smt. Preetha, learned counsel for the first respondent-writ petitioner submits that there are more than 5000 workers and closure of the nine units of the 3rd respondent-Company will result in great hardship to them and their family and as such the management of the company may be entrusted to the first respondent. We cannot do the same straightaway and if the first respondent so wishes, it can file a representation before the Union of India (1st appellant in W.A. No. 1202/2004) and it for the Union of India to take such decision as it may deem fit in the facts and circumstances. If the first respondent makes a representation and also seeks an opportunity of personal hearing, the Union of India shall afford such opportunity.

The writ appeals are disposed of as above.