
(2001) 07 JH CK 0094

In the Jharkhand High Court

Case No : LPA No"s. 182, 219, 250, 335, 337, 354 and 366 of 2001

Usha Beltran Ltd., Bihar Caustics and Chemicals Ltd.,
Hindustan Copper Ltd., Bihar State Electricity Board and
Others, Bihar Extrusions Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : AIR 2002 JHAR 119 : (2001) 1 JLJR(Jhar) 202

Hon'ble Judges : V.K. Gupta, C.J;D.N. Prasad, J

Bench : Division Bench

Advocate : S.K. Kapoor, Biren Poddar, Joy Saha and Darshana P. Mishra, V.P. Singh, Mukesh Kumar and Rajesh Shankar, for the Appellant; M.K. Jha Ajit Kumar and Manoj Tandon, for the Respondent

Judgement

1. By this common judgment, we propose to dispose of the these appeals.
2. These appeals are directed against the judgment dated 30th March, 2001 passed by the learned Single Judge of this Court. Broadly speaking, four issues arose for consideration in the writ petitions by the appellants-petitioners which resulted in passing the aforesaid Judgment. These four issues may be summarised as under :--
 - (i)--Issue relating to deletion of H-3-- so called or alleged non-compliance of the directions contained in the Divisions Bench judgment dated 26th June, 2000.
 - (ii)--Issue relating to reflection of D-3--And its repercussions.
 - (iii)--Whether the writ petitioners-consumers were entitled to be passed on the benefit with respect to fuel surcharge because of the alleged benefit of Rupees one hundred crore allegedly having accrued to the Board owing to the coming about of some resolution, if any, between the Board and the Coal Companies.
 - (iv) Issue relating to levy of fuel surcharge on non-consumed Units.

3. The Division Bench Judgment dated 26th June 2000 has admittedly been challenged in the Supreme Court by both the parties. Admittedly the Supreme Court has since granted leave and the, Appeals are stated to be pending for hearing there.

Our attention was invited to various orders passed by the Supreme Court, specially the order dated 8th December, 2000 whereby their Lordships of the Supreme Court were pleased not to grant any interim order in the Special Leave petitions (converted into appeals) filed by the Board and the consumers as well.

4. The net result is that even though the Division Bench judgment dated 26th June, 2000 has been challenged in the Supreme Court, the Supreme Court has granted the Special leave and appeals are pending, the operation, implementation and execution of the Division Bench judgment has not been stayed by the Supreme Court. Actually one can say that the Supreme Court has declined to pass any such stay order.

5. Mr. Kapoor, learned Senior Advocate appearing on behalf of the appellants has invited our attention to a recent Judgment of the Supreme Court in the case of Kunhayammed and Others Vs. State of Kerala and Another, in which their Lordship while examining the issue with regard to the pendency or the SLP or an Appeal before the Supreme Court clearly observed and held that even though once leave to Appeal has been granted and the finality of the judgment appealed against is put in jeopardy, the operation of the judgment appealed against continues and the judgment continues to be operative between the parties unless it is a nullity or unless the Supreme Court has passed a specific order staying, or suspending, the execution of the judgment in question.

6. In view of the aforesaid circumstance and reasoning, we are of the considered opinion that mere pendency of the SLP or later, on, the Appeal before the Supreme Court could not have been a ground for the learned single judge not to have pronounced his Findings and judgment on the aforesaid four issues involved in the writ petitions. This is more so when we are told that the last two issues did not even directly form the subject matter of adjudication before the Supreme Court in the case between the parties. This coupled with the fact that with respect to both these issues, the contention of party is that their adjudication was and is barred by the principles of res judicata or constructive res judicata, even though the other party refutes such contention. We, however, on our part refrain from making any comments on this aspect.

7. Mr. Jha, learned counsel appearing for the Board, has also raised a contention that the learned Single Judge, even though made certain observations in the course of his judgment under challenged in this appeal, but did not take into consideration some documents accompanying the Supplementary/Additional Affidavit filed by the Board. Mr. Jha's grievance is that non-consideration of these documents would tend to jeopardise the interests of his clients.

8. On an overall consideration therefore, we feel quite confident that under the

facts and circumstances as are hereinabove mentioned, the best course of action would be to remit the matter back to the learned Single Judge for reconsideration and re-hearing on all the issues involved for adjudication between the parties on their merits and in accordance with law, but being uninfluenced by the fact of the pendency of the Appeal in the Supreme Court, treating the Division Bench judgment of 26th June, 2000 as having a binding effect and continuing to operate in all respects.

9. The appeals are accordingly, disposed of in view of the aforesaid observations, the judgment of the learned Single Judge is set aside. The learned Single Judge shall rehear the parties in the light of the aforesaid observations and dispose of the writ petitions expeditiously. If possible, endeavour shall be made to dispose of the writ petitions within the months. The parties undertake not to seek any adjournment on any date on any ground whatsoever before the learned Single Judge.

10. We record this undertaking and make it clear that adjournment shall be not be sought or obtained by any of the parties. The writ petitioners in the writ petitions are at liberty to file reply to the additional/supplementary affidavit of the Board. Such reply shall be filed within ten days from today.

11. In so far as any interim arrangement is concerned, we wish to make it absolutely clear that the interim arrangement as ordered by the Division Bench in respect of the cases from time to time, if any, shall continue to operate till the disposal of the writ petitions, or earlier if on a prayer made by party before the learned Single Judge, he decides to vary, modify, or even to vacate such interim arrangement. We wish to make it clear that the learned Single Judge shall be free to do so.

12. The writ petitions shall be placed before the appropriate Single Judge on 16th August, 2001.