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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM APPLs. 3864/2019 & 4525/2019 In W.P.(C) 1565/2015**

Decided on: 16th May, 2019

**ELECTROSTEEL CASTINGS
LIMITED & ANR.**

..... Petitioners

Through: Mr. Akhil Sibal, Sr. Adv.,
Mr. Pushpinder Kaurav, Sr. Adv. with
Mr. Gaurav Juneja, Ms. Saman Ahsan
& Mr. Mohit Oommen, Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Maninder Acharya, ASG with
Mr. Kirtiman Singh, CGSC &
Mr. Waize Ali Noor, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

: **Rajendra Menon, Chief Justice (Oral)**

CM APPLs. 3864/2019 & 4525/2019

1. Both these applications have been filed in W.P.(C) No.1565/2015 *Electrosteel Castings Limited & Anr. vs. Union of India & Anr.* decided by a Co-ordinate Bench of this Court on 09.03.2017.
2. Various writ petitions including W.P.(C) No.1565/2015 were filed challenging the provisions of Section 16 of the Coalmines (Special Provisions) Second Ordinance, 2014 which was subsequently replaced by the Coalmines (Special Provisions) Act, 2015 and Rule 14 of the Coalmines (Special Provisions) Rules, 2015. All the writ petitions were heard and

decided by a common judgment, wherein the constitutional validity of the provisions was upheld. It was held that Section 16 of the said Ordinance and Rule 14 of the Rules are to be interpreted and worked-out in the manner indicated in the judgment; and that they cannot be held to be violative of Articles 14, 19(1)(g) and 300A of the Constitution. The manner of assessment of compensation payable on various heads, i.e., for the land value and the mine infrastructure, etc. were to be determined in accordance to certain observations made and directions contained in the judgment. Liberty was granted to each of the petitioners to raise disputes with regard to the quantum of compensation if the same is not done in accordance to the indication made in the judgment, either before the Tribunal which has been specifically created for this purpose under Section 27 of the impugned act or in accordance with law before the appropriate forum.

3. After the petition was disposed of, it seems that assessment of compensation was not done and therefore CM No.4201/2017 was filed by the petitioners herein, namely, Electrosteel Castings Limited & Anr. and on 15.02.2017, whereupon the respondents were directed to reconsider the valuation and assessment of land value and mine infrastructure in the Parbatpur Central Coal Mines within six weeks.

4. It was thereafter alleged that the six weeks period expired on 30.03.2017; and since no action was taken by the respondents in terms of the order passed, therefore another application CM No.18977/2017 was filed by the petitioners complaining of non-compliance with the order passed on 15.02.2017. On this application, on 19.05.2017, respondents were granted eight weeks time to take a final view in the matter and the petitioners were

directed to re-furnish data within one week of 19.05.2017. The said eight weeks period also expired on 14.07.2017; and it was then alleged that the respondents failed to comply with the order passed on 19.05.2017 despite repeated reminders by the petitioner. Accordingly, CM No.3840/2018 was filed by the petitioners on 31.01.2018 on account of non-compliance. The matter was adjourned to 12.02.2018 at the request of the respondents. Since no action was taken by the respondents, on 12.02.2018 it is said, and the order also indicates, that brief submissions were handed over by the respondents seeking further three months time to comply with the previous orders of the Court. The respondents were therefore directed to consider the information to be provided by the petitioner as per the new format, which is said to have been introduced by the respondents on 01.02.2018 at the earliest and to expedite the decision making process. The matter was directed to be listed on 19.04.2018 when a status report was to be filed.

5. On 19.04.2018, the status report was filed by the respondents and a further period of three months was sought which was granted and the matter was directed to be listed on 29.08.2018. Even though the three months period expired on 19.07.2018, it is said that the respondents failed to comply with the orders passed.

6. On 29.08.2018, this Court directed for listing of the matter on 10.09.2018 and further directed the respondents to file an affidavit *inter alia* indicating the procedure followed for assessment of compensation in terms of the order passed on 09.03.2017.

7. On 07.09.2018, CM No.36876/2018 was filed by the respondent stating that it was expected that the exercise as directed by this Court would

take a further period of three months to complete. This application was taken-up on 10.09.2018 and this Court directed that the decision be now taken within three months from the date of the order, failing which this Court would consider taking coercive action against the respondents for violating the orders passed by this Court from time-to-time. The period of three months expired on 10.12.2018. It is said that no compliance was made within the time stipulated. Thereafter CM No.3864/2019 was filed by the respondents on 05.01.2019 seeking a further period of two months to comply with the previous orders passed by this Court. This application was taken-up for consideration by the Court on 25.01.2019 but on that day as the Court could not assemble, the case was adjourned to 19.02.2019. In the meanwhile, petitioners also filed CM No.4525/2019 seeking implementation of all the orders including the order passed on 10.09.2018.

8. Both these applications i.e. CM No.3864/2019 for extension of time and CM No.4525/2019 were taken-up by the Court on 30.01.2019, on which date this Court observed that the respondents have delayed the matter since 15.02.2017 and directed that the officer concerned responsible for taking action in the matter should remain present in the Court on 19.02.2019. It was also observed that in case the order is complied with and a compliance report is filed on or before 19.02.2019, the officer would be granted exemption from personal appearance.

9. On 18.02.2019, an affidavit was filed by the respondents in purported compliance of the order passed on 30.01.2019, just a day before the date of hearing i.e. 19.02.2019 and along with the affidavit a decision dated 15.02.2019 rendered by the nominated authority was brought on record.

It was stated in the affidavit that the decision has been taken on 15.02.2019.

10. In relation to the determination of compensation for land and mine infrastructure payable to the petitioner, the prior allottee, and after providing the revised valuation of compensation in para 8 of the order it was indicated that in case the prior allottee, namely the petitioner or the present allottee of the coalmine namely M/s Steel Authority of India Limited, had any objection they were directed to appear and were given an opportunity of hearing on 25.02.2019 at 11:00 a.m., when they could present their objections for consideration. It was also indicated that it is open to them to raise any dispute with regard to the quantum of compensation before the Tribunal. According to the petitioner, this was the tentative compensation assessment and the final assessment was to be done only after the objections were considered at the hearing to be concluded on 25.02.2019.

11. On 19.02.2019, this Court took on record the affidavit filed on 18.02.2019; the matter was posted for 07.03.2019; and exemption from personal appearance of the officer was also granted.

12. It is stated that in pursuance to the notice given while passing the order on 15.02.2019 the petitioners appeared before the authority concerned on 25.02.2019 and submitted their preliminary objections to the effect that the documents relied upon by the nominated authority while taking its decision on 15.02.2019 were not provided to the petitioner; and petitioners claimed their right to receive all documents and further indicated that they would file detailed objections once such documents are supplied to them. However, on 25.02.2019 the hearing was adjourned since Steel Authority of India stated that they were not prepared and sought further time. Thereafter,

on 27.02.2019, the hearing was again adjourned at the request of Steel Authority of India. When petitioner again sought copies of documents from the nominated authority based on which the decision was taken on 15.02.2019, the proceedings of 27.02.2019 which are available on record indicate that the petitioner was informed that the same would be handed-over on the next date of hearing i.e. 06.03.2019. However, on 05.03.2019, a day before the date of hearing, petitioner was informed via e-mail that no hearing before the nominated authority would be held on 06.03.2019.

13. The matter was adjourned indefinitely and it was informed that the next date of hearing would be intimated. When the case was taken up by this Court on 07.03.2019, this Court posted the matter for hearing on 26.03.2019 in order to enable the petitioners to file their response to the affidavit dated 18.02.2019 filed by the respondents. The matter was posted for 26.03.2019. On 26.03.2019, petitioners filed reply to the affidavit dated 18.02.2019; raised objection to the decision dated 15.02.2019 and it was their contention that the decision is not in compliance with the order passed on 10.09.2018 or the original order passed in the writ petition. Respondents contended that it was only an interim decision and no final decision had been taken.

14. However, on 26.03.2019 the Court could not assemble and the matter was adjourned to 16.04.2019. On a mention made on 27.03.2019, the matter was directed to be listed on 08.04.2019; and on 08.04.2019, at the request of parties the matter was directed to be listed on 12.04.2019.

15. However, it is the case of the petitioner that on the same day, i.e., 08.04.2019 petitioner received an e-mail from the nominated authority

informing them that the next date of listing before the nominated authority is 10.04.2019, on which date the petitioner was directed to appear. Petitioner is said to have made a request on the same day by pointing-out that this Court has listed the case for considering the objection to the decision dated 15.02.2019 on 12.04.2019 and therefore hearing before the nominated authority on 10.04.2019 be adjourned. It is said that in spite of this on 10.04.2019 the nominated authority closed the matter on the ground that any adjournment would amount to contempt of court; and gave its final decision on 11.04.2019 by passing a detailed order a copy of which was submitted before this Court.

16. When the matter was taken up on 12.04.2019 the petitioners pointed-out all the facts and sought time to bring on record their objections with regard to the manner in which the decision was taken. This was permitted and on 30.04.2019 the petitioners filed objections and documents to show infirmities in both the decisions, namely, the first decision taken on 15.02.2019, the final decision taken on 11.04.2019; attempting to demonstrate how proper consideration has not been made; the documents requested by the petitioners were not provided and how in a hasty manner the entire decision was taken only to show to this Court that a decision has been taken. In reply to these submissions, the respondents have also filed their affidavit; and by referring to the detailed orders passed they have indicated that now, as both the tentative and the final decisions have been taken, all objections and submissions made by the petitioners have been considered, they have been dealt-with in the order in seriatim; and now the only remedy available to the petitioner is to challenge the action before the

appropriate specified Tribunal under the statute and the matter be now disposed of.

17. We have heard the matter at length on various dates and have considered the submissions made with regard to the decisions taken by the nominated authority as indicated hereinabove, namely, the first decision on 15.02.2019 and the final determination on 11.04.2019.

18. The contention of the petitioners represented by Shri Akhil Sibal, learned Senior Advocate, Shri Pushpinder Kaurav, learned Senior Advocate with Shri Gaurav Juneja, learned counsel are that considerations have not been made in accordance to the mandate of the directions and the observations made in the original order passed in the writ petition and the observations made by this Court on 10.09.2018. The assessment of land value based on circle rates and documents like sale deed have not been done in a proper manner. The value of mine infrastructure has not been calculated properly; and even though claims have been made under various heads, compensation has not been assessed properly. Detailed submissions were made to demonstrate before us, as to how and in what manner, an arbitrary assessment of compensation has been done.

19. Per contra, Ms. Maninder Acharya, learned Addl. Solicitor General assisted by Shri Kirtiman Singh, learned Standing Counsel refuted the contentions, took us through the order passed on 15.02.2019 in detail, the written objections brought on record by the petitioner, their considerations made in the order passed on 15.02.2019, the final decision taken on 11.04.2019; and tried to indicate that all the objections were considered when the decision was taken on 15.02.2019. It was submitted that there

being no material or evidence to take a different view subsequently, the same view that was originally taken on 15.02.2019 has been affirmed; and once the nominated authority in accordance with the statute has taken a decision, the petitioner should challenge the same before the statutory appellate forum, namely, a Tribunal created for the same; and that this Court should not make any further indulgence in the matter.

20. It is the case of the petitioners that from the narration of facts as detailed by them hereinabove, right from 09.03.2017 after the original petition was decided and thereafter from 15.02.2017 when CM No.4201/2017 was disposed of granting six weeks time to the respondents to take a decision, the respondents have been delaying the matter for more than two years; and it was only when this Court started taking coercive action by directing for appearance of the officer concerned on 30.01.2019 that, in a hurried manner within 15 days, initially on 15.02.2019 and thereafter on 11.04.2019 without granting proper opportunity or time and without supplying all the documents as claimed for including the land evaluation report, CMPDI report, etc. a decision has been taken. In these circumstances the prayer made before us is that both the decisions taken on 15.02.2019 and 11.04.2019 be set-aside and the matter be remanded back to the nominated authority, with a direction to supply all the documents, give a proper opportunity of hearing and thereafter take a decision.

21. Ms. Maninder Acharya, learned Addl. Solicitor General submitted that full opportunity has been granted, detailed orders have already been passed and now when a statutory remedy of appeal before a nominated Tribunal is available, exercise of extraordinary jurisdiction by this Court is

not called for.

22. We have considered the rival contentions and have gone through the records. We find that originally, when the writ petition was decided and thereafter on 15.02.2017 and on various dates including on 10.09.2018, this Court had directed that a decision be taken by the nominated authority by issuing certain observations and directions. For more than two years and two months nothing was done; and it was only after this Court took a serious view of the matter and initiated coercive steps on 30.01.2019 that the first decision was taken within 15 days on 15.02.2019; and in this decision the petitioners and Steel Authority of India were granted an opportunity to appear for hearing and file their objections on 25.02.2019. On 25.02.2019, and even before that, the petitioners submitted their preliminary objections, reserved their right to file detailed objections and sought for various documents and material; however because of requests made by Steel Authority of India the matter was adjourned to 27.02.2019. On 27.02.2019, again at the instance of Steel Authority of India the matter was adjourned. No hearing took place on 06.03.2019; and proceedings were adjourned; and when the matter was fixed by this Court on 12.04.2019, it seems on 10.04.2019 a hearing was fixed; request of the petitioner for adjournment was rejected; and immediately on the next date i.e. on 11.04.2019 a final decision was taken.

23. Even though as canvassed by Ms. Maninder Acharya, learned Addl. Solicitor General the petitioner's have a right to assail all these actions before the nominated statutory Tribunal by way of an appeal but the fact remains that in this case a decision has been taken in a hurried manner and

the procedure followed, as detailed by us hereinabove, does indicate that a reasonable and fair opportunity to the petitioner to put-up their objections and relevant material have not been afforded. That being so, we are of the considered view that once the respondents were themselves responsible for the delay of more than two years in taking a decision, a reasonable prayer made by the petitioners for providing them certain documents and granting them time to file detailed objections should have been acceded to; and the decision taken in such a hurried manner is not proper. We need not go into the details, or the reasoning and the justification given by the respondents for assessment of the compensation at this stage and approve or reject it. We are satisfied that the decision was taken in a hurried manner; and the haste in which the proceedings were held did result in prejudice to the petitioners. That being the position, we are of the considered view that interests of justice would be met if the orders passed by the respondents are set aside and the matter is remanded back to the nominated authority, to proceed in accordance with law and take a decision afresh.

24. Accordingly, we hold and direct that the first decision taken on 15.02.2019 and the second decision (final determination done) on 11.04.2019, having been taken without granting due opportunity to the petitioners, are set-aside.

25. The petitioners shall appear before the nominated authority on 17.06.2019, file their objections as they may be advised; they may also file applications seeking documents or any other information as permissible in law; and the nominated authority, after considering their objections and the request for supply of documents or information, after hearing all concerned

including Steel Authority of India or any other authority, and after granting such personal hearing as may be required in the facts and circumstances, take a final decision in the matter on or before 31st August, 2019.

26. Needless to emphasize that we have not expressed any opinion on the merits with regard to assessment of compensation or its quantification. We have simply remanded the matter back for fresh determination as we are of the considered view that proper opportunity of hearing, as is required, was not afforded to the petitioners.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

MAY 16, 2019
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