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

+ **LPA 556/2012**

BALAJEE COAL CARRIERS LTD AND ANR Appellants

Through: Mr. Mahabir Singh, Sr. Advocate with
Ms. Preeti Singh & Mr. Gagan Deep
Sharma, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Vivek Goyal, CGSC for UOI with
Mr. Pawan Pathak, Advocate.
Mr. Hamendra Sharma, Advocate with
Mr. Karan Singh Bhati, Advocate for
R2 to R4.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
15.11.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 17th May 2012 passed by the learned Single Judge dismissing the Appellants' WP (C) 2549 of 2012 on the ground that this Court lacks the territorial jurisdiction to entertain the petition.

2. The background facts are that a Memorandum of Understanding (MoU) was entered into between the Director General of Re-settlement (DGR) and the Coal India Ltd. (CIL) keeping in view the scheme formulated to raise 'Ex-servicemen Coal Transportation Companies' formulated between the erstwhile Ministry of Energy and the Ministry of Defence in 1979. The aim

was to have captive transport organisations in coal subsidiaries and provide an opportunity to ex-servicemen for resettlement.

3. The MoU provided that on a request being received from CIL or any of its subsidiaries the DGR would have suitable and eligible ex-servicemen selected to form a private limited company for providing transportation of coal mine by the CIL or its subsidiaries companies. It was stipulated in Clause 15 of the MoU that the transport contract be given strictly to only those companies which were formed by ex-servicemen and would be sponsored by the DGR. Clause 18 of the MoU *inter alia* spoke of 'policy on fixation of rates and revision of rates'. It is stated that "modalities of fixing rates and escalation to pay yearly will be formulated by CIL in consultation with DGR" in other words in fixing rates and escalation on a yearly basis the CIL had to consult the DGR.

4. The Appellants were two such companies formed by the ex-servicemen. They were sponsored by the DGR for being awarded the transport contract by CIL. According to the Appellants they worked as transport contractors in Jharkhand. Appellant No.1 worked from 1998 to 2010 in Ranchi, Jharkhand while Appellant No.2 worked from 3rd May 1998 to 3rd May 2008 in Dhanbad, Jharkhand.

5. The grievance of both these Appellants was that there had been no revision of the rates in terms of Clause 18 of the MoU from 2002 to 2009 and both Appellants, therefore, suffered huge losses due to the increase of the amenities for transportation. It is in those circumstances that both

Appellants filed WP (C) 2549 of 2012 in this Court.

6. Even at the preliminary hearing of the writ petition, without issuing notice to the Respondents the writ petition was dismissed by the impugned order dated 17th May 2012 with the learned Single Judge holding that:

- (i) The MoU was entered into between the DGR and CIL to which the present Appellants were not party;
- (ii) CIL was not situated within the territorial jurisdiction of this Court. The address of the Chairman of CIL was Kolkata (West Bengal);
- (iii) The MoU was merely an agreement to enter into future agreement between CIL/its subsidiaries and the companies of the ex-servicemen. To enter into an agreement in future cannot be enforced.
- (iv) The agreements entered into by the two Appellants with CCFL and BCCL respectively were not placed on record to show whether they vested jurisdiction in this Court. It was not claimed that these agreements were entered into at Delhi. Both CCFL and BCCL were situated in Jharkhand.

7. It appears that a year after the dismissal of the above writ petition filed by the present Appellants, another transport company formed by ex-servicemen viz., Khushi Coal Transport Pvt. Ltd. and 6 other companies filed WP (C) 1792 of 2013. It is clarified that these Petitioners had approached this Court in a representative capacity, representing 47 other such companies as well. It is also an admitted position that all these companies were companies of ex-servicemen and all these companies were awarded coal transport contracts by the CIL on the recommendation of the DGR.

8. The prayer in WP (C) 1792 of 2013 was more or less identical to the prayers in the writ petition filed by the present Appellants. There the Petitioners assailed the decision taken by CIL on 8th August 2012 declining to revise the rates of transportation. There were 3 other consequential orders categorised as ‘approval orders’ dated 9th October 2012 which were also challenged in that writ petition.

9. In a detailed judgment dated 15th January 2015 a learned Single Judge of this Court after hearing the parties allowed the said writ petition on the limited prayers made at the time of arguments viz., the quashing of the impugned order dated 8th August 2012 and the consequential orders dated 9th October 2012. The learned Single Judge found that the exercise pursuant to which the impugned decision was taken by the CIL did not involve the DGR, although it was bound to consult the DGR in terms of clause 18 of the MoU. In para 8.2 of the judgment the learned Single Judge noted that on this aspect CIL “despite being noticed by this Court, the Defendant has not filed a reply in the matter. The assertions made by the Petitioner have gone untraversed and, therefore, will have to be accepted.” The learned Single Judge directed the Respondents, which included CIL and its subsidiaries, to “take consequential steps in light of the directions issued hereinabove”. In other words the mandamus to the CIL and its subsidiaries was, in terms of clause 18 of the MoU, to revise the rates for transportation of coal that should be paid to the coal transport companies formed by the ex-servicemen.

10. Aggrieved by the above decision, CIL and another subsidiary then filed a LPA No.346 of 2015 in this Court. The appeal was dismissed by the

Division Bench (DB) by speaking order. The DB also noted that CIL had chosen not to file a counter affidavit in the writ petition “contradicting the specific plea of the Petitioners that the provisions of the clause in MoU relating to fixation/escalation of rates was not adhered to by it.” It was further noted by the DB that on the other hand the DGR had filed a counter-affidavit “stating that there was no prior consultations by CIL and the rates have not been revised regularly each year.” The DB in the operative portion of the order held as under:

“3. Having heard the learned counsel for both the parties and having perused the material available on record, we do not find any justifiable reason to interfere with the order under appeal. As noticed above, there is a specific clause in the MOU providing for fixation of rates and escalation on a yearly basis and in consultation with DGR. A clear finding has been recorded by the learned Single Judge that the Coal India Ltd. failed to adhere to the above-noticed requirements while revising the rates by the impugned order dated 08.08.2012. The fact that there was no consultation with DGR before fixing the rates has been reiterated before us by the learned counsel appearing for DGR.

4. Therefore, the learned Single Judge has rightly set aside the impugned order dated 08.08.2012 and the interference by us is not warranted on any ground whatsoever.

Accordingly, the appeal is dismissed.”

11. Aggrieved by the dismissal of their appeal by the DB, CIL and the subsidiary filed SLP (C) 6177 of 2016 in the Supreme Court of India. On 2nd May 2017 the Supreme Court dismissed the SLP by the following order:

“We find no reason to entertain this special leave petition, which is, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.”

12. This Court is informed by Mr. Hemendra Sharma, learned counsel for CIL, that pursuant to the dismissal of the SLP, CIL is now in the process of fixing the modalities for revising the rates in consultation with DGR.

13. This Court has heard the submissions of Mr. Mahabir Singh, learned Senior Counsel appearing for Appellants and Mr. Hemendra Sharma, learned Counsel appearing for the Respondents.

14. At the outset Mr. Mahabir Singh submitted that CIL not having raised any objection in the writ petition filed by Khushi Coal Transport Pvt. Ltd. and 6 other companies, representing 47 of the transport companies identically placed with the present Appellants, as to the lack of territorial jurisdiction of this Court, and in fact not having filed any counter-affidavit in the writ petition filed by the Appellants raising such objection, should not be allowed to ‘pick and choose’ among the identically placed transport companies in opposing identical prayers on technical grounds. In other words, his submission was that when all other 54 transport companies have been granted relief by the learned Single Judge, which has been upheld by the DB of this Court as well as by the Supreme Court, there is no reason why the present two Appellants should alone be denied such a relief.

15. Mr. Sharma, learned counsel for CIL, did not dispute the above facts. However, he pointed out that in the reply filed in the present LPA, the CIL has raised an objection as to the lack of territorial jurisdiction of this Court

to entertain the writ petition.

16. The Court finds that CIL did not file a reply in WP (C) 1792 of 2013 filed by Khushi Coal Transport Pvt. Ltd. and 6 other companies. This was noted in para 8.2 of the order dated 15th January 2015 passed by the learned Single Judge. This fact has also been noticed by the DB in its decision dated 23rd September 2015 dismissing CIL's LPA No. 346 of 2015. Further, the Court finds that even in the LPA filed by them before the DB no plea was raised by CIL that the learned Single Judge who decided WP(C) 1792 of 2013 lacked territorial jurisdiction to do so.

17. It must be noted here that many of the companies i.e. Khushi Coal Transport Pvt. Ltd. and 6 other companies which had filed WP (C) 1792 of 2013 and the 47 other companies they were representing were incorporated outside of Delhi. According to Mr. Mahabir Singh, communications were addressed by the DGR to the CIL from Delhi on the issue of the revision of rates payable to the present Appellants.

18. Be that as it may, since the learned Single Judge in the present case dismissed the writ petition at the very first instance, there was no occasion for a stand to be taken by the Respondents. It is, therefore, open to speculation whether, if they had been asked to file reply, they may have raised any preliminary objection as to territorial jurisdiction. What is clear, however is that in respect of the 7 plus 47 transport companies that were before the Court in WP (C) 1792 of 2013, and were placed identically as the present Appellants, none of the Respondents raised any such objection as to

maintainability of the petition on the ground of territorial jurisdiction. With the Respondents having carried the matter unsuccessfully in appeal both before the DB of this Court as well as the Supreme Court, they should not be allowed to plead that as far as the present Appellants are concerned, their writ petition should be dismissed on account of lack of territorial jurisdiction. Consequently, this Court sets aside the impugned order of the learned Single Judge which has dismissed the Appellant's writ petition solely on that ground.

19. This Court could have remanded the matter to the learned Single Judge for a decision on merits but giving the passage of time and the fact that the decision dated 15th January 2015 of the learned Single Judge in WP (C) 1792 of 2013 on merits on an identical issue has been affirmed both by the DB of this Court by its decision dated 21st September 2015 in LPA 346 of 2015 and the Supreme Court by the dismissal of SLP (C) 6177 of 2016 by the order dated 2nd May 2017, the Court sees no reason why a similar relief cannot be granted straightway to the Appellants. Moreover their contracts with CIL ended nearly a decade ago.

20. At this stage, it must be noticed that a submission has been advanced on behalf of CIL that the relief granted by the learned Single Judge was only for consequential steps to be taken which is in terms of clause 18 only to determine 'modalities of fixing rates and escalation to be paid yearly' and not a direction to the CIL to actually revise the rates that should be paid to the coal transport companies.

21. The Court is unable to accept this submission which proceeds on a very

narrow understanding of the relief granted to the coal transport companies by this Court. No doubt, in terms of clause 18 of the MoU, the requirement is for determining the modalities for fixing the rates in consultation with DGR but clearly the whole purpose of determining those modalities was to revise the rates and escalation that should be paid on a yearly basis. Therefore, the Respondents ought not to understand the learned Single Judge as having directed them only to determine the modalities and not to act further. In other words, they are required to also actually revise the rates and pay those revised rates to the transport companies that have succeeded before this Court.

22. The Court sees no reason why the present Appellants should be denied similar relief. Consequently, even in the case of the present Appellants, the Court issues a mandamus to the CIL and its subsidiaries to determine the modalities for fixing the revised rates in terms of Clause 18 of the MoU in consultation with the DGR and pay the revised rates on par with the other transport companies who had succeeded in WP(C) 1792 of 2013. The entire exercise be completed within a period of three months from today.

23. The appeal is allowed in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 15, 2018

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