

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 26/11/2019****Judgment Delivered on : 28/11/2019****Writ Appeal No. 528 of 2019***{Arising out of Order dated 14.10.2019 passed in Writ Petition (L) No. 207 of 2019 by the learned Single Judge}*

South Eastern Coalfields Limited, through: its General Manager, South Eastern Coalfields Limited, Hasdeo Area, PO South Jhagrakhand Colliery, District Korea Chhattisgarh Pin Code 497448.

---- Appellant**Versus**

1. Regional Labour Commissioner (Central) Main Road, Torwa, Bilaspur, District Bilaspur, Chhattisgarh Pin Code 495004

2. National Federation of Indian Trade Union (NFITU) Shrami Sadan, In front of Apollo Pharmacy, Main Road, Vidya Nagar, Bilaspur, District Bilaspur, Chhattisgarh Pin Code 495004

3. Rashtriya Colliery Mazdoor Congress (Regd. No. 22 of 1948) A trade Union having its Head Quarter at B/21-22, Indira Vihar, Seepat Road, District Bilaspur, Chhattisgarh, Through its General Secretary - Dr. Deepak Jaiswal S/o Late Shri Ramswarup Jaiswal, aged about 57 years, R/o Vidya Nagar, In front of Apollo Pharmacy, Bilaspur, Police Station Tarbahar, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Ajit Sinha, Senior Advocate with Shri Anoop Mehta and Shri Vinod Deshmukh, Advocates.
For Uol/Respondent No. 1	: Shri B. Gopa Kumar, Assistant Solicitor General.
For Respondents No. 2 and 3	: Shri Prafull N Bharat and Shri Rishi Rahul Soni, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. The appeal is against the interim order passed by the learned Single Judge on 14.10.2019 in Writ Petition (L) No. 207 of 2019, the operative portion of which reads as follows:

"The issues raised at Bar are yet to be adjudicated.

As of now, considering the issuance of RRC and past long history of litigation, it is directed that subject to petitioner's depositing 50% of the amount so demanded with respondent No.1, recovery of the remaining amount shall remain stayed until further orders. The amount to be so deposited shall be kept in a fixed deposit of the Bank, which shall be subject to final adjudication of this writ petition.

Cc as per rules."

2. The main challenge raised by the Appellant-Company who is the writ petitioner, as put forth by Shri Ajit Sinha, the learned Senior Counsel is that the industrial unrest in connection with the claim for regularisation of the contract workers was put to rest as per Annexure P/2 Award dated 30.08.1990 whereby regularisation of the workers represented by the Union concerned (referred as per four separate References No. 3, 4, 5 and 6 of 1989) was ordered with consequential benefits as mentioned therein. It is the case of the Appellant that pursuant to the said Award, which has become final, after verification of the

particulars of the workers shown in the lists furnished by the Union, they were regularised and the matter has become final. No such list was ever submitted by the 2nd and 3rd Respondents as revealed from the copies of the proceedings produced alongwith the writ petition and the appeal. Later, the 2nd Respondent-Union raised a claim by approaching the Regional Labour Commissioner to the effect that the workers represented by them shall also be extended the benefit flowing from the award, which was closed by the Regional Labour Commissioner on 01.04.1993 holding that nothing survived to facilitate any further reference or such other action.

3. The 2nd Respondent-Union filed Miscellaneous Petition No. 1322 of 1994 before the High Court of Madhya Pradesh at Jabalpur which came to be disposed on 10.11.2005 directing the Regional Labour Commissioner to have the matter re-considered with reference to the facts and figures. This led to Annexure P/4 dated 22.02.2006, which according to the Appellant-Company does not grant any relief to the Union, whereas according to the Union, it is beneficial to them. Annexure P/4 has not been challenged from either side.

4. Writ Petition No. 5920 of 2007 was filed by the Respondent-Union to get Annexure P/4 implemented. A reply was filed from the part of the Respondents therein (Respondents 1 to 4 including the Regional Labour Commissioner and the Ministry) to the effect that there was no question of any non-implementation of the Award, that the writ petition was not maintainable and that nothing survived to be considered further. Later, the said writ petition was dismissed as 'withdrawn' on 08.03.2017. The Appellant-Company contends that, years later, the 2nd Respondent-Union approached the Regional Labour Commissioner at Bilaspur on 31.01.2015 claiming similar benefits. Pursuant to the proceedings dated 21.08.2015 of the Regional Labour Commissioner, the current status was furnished by the Appellant, contending that no relief was liable to be extended to the Respondent-Union, simultaneously supplying all the relevant particulars in this

regard. On 28.12.2018 the Regional Labour Commissioner passed an order fixing the liability of the Appellant as Rs. 55.80 Crores (approx.) and issued a recovery certificate simultaneously ordering prosecution proceedings. The prosecution proceedings stand challenged in Writ Petition (Cr) No. 195 of 2018, mainly with reference to bar of limitation under Section 468 of the CrPC and as per Annexure P/11 order dated 08.05.2019 it stands stayed. The show cause notices issued to the Petitioner with regard to the recovery and such other proceedings are challenged in WP(L) No. 270 of 2019, questioning the jurisdiction/competence of the Regional Labour Commissioner, principles of res judicata and also the bar of limitation. After hearing both the sides, the learned Single Judge passed Annexure A/1 order on 14.10.2019 directing the Appellant-Company to deposit 50% of the demand, with further directions as extracted already, which in turn is under challenge in this appeal.

5. The learned Senior Counsel submits that the Award had already been implemented completely. It is stated that the course of action pursued by the Regional Labour Commissioner is *per se* wrong and illegal in all respects, more so, since the conciliation authority does not have any power of adjudication, as settled by the law declared by the Apex Court on many an occasion. It is also pointed out that Section 33C.(2) should precede the action under Section 33(1) of the Industrial Disputes Act, 1947. Since the entire proceedings are null and void, the direction given by the learned Single Judge is as good as 'final', as the consequence will be "irreversible", and hence the challenge; submits the learned counsel.

6. Shri Prafull N Bharat, the learned counsel appearing for the Respondent-Union rebuts the factual and legal aspects with reference to the materials produced, including the return dated 25.11.2019 filed in the present appeal. The learned counsel submits that the appeal itself is not maintainable, being against an interim order, by virtue of proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. It is also pointed out that the name of the

2nd Respondent-Union is very much reflected from Annexure P/2; that the list of 135 workers had already been submitted and forms the part of the agreement executed on 23.09.1989 in Form 'C' under Rule 7 of the relevant Rules and further that Writ Petition No. 5920 of 2007 was withdrawn only by virtue of subsequent development as mentioned in the interlocutory application seeking for permission to withdraw, pointing out that the reliefs sought against the Ministry and the Regional Labour Commissioner were granted and hence no grievance in that regard was subsisting, with liberty to approach, 'if necessitated'. The learned counsel further submits that the interim order passed by the learned Single Judge only directs the deposit to be effected, which is to be kept in a "fixed deposit" and that it will be subject to the result of the writ petition, as ordered therein. Since the amount is not ordered to be given to the Union or the workers, and it is subject to the result of the petition, the contention that the consequential effect is 'irreversible', is not correct.

7. Section 2(1) of the Act, 2006 reads as follows:

"2. Appeal to Division Bench of the High Court from a judgment or order of one judge of the High Court made in exercise of original jurisdiction. - (1) An appeal shall lie from a judgment or order passed by one judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India."

8. Proviso to the above Section clearly places a hurdle in filing appeal against an interim order. The scope of the above proviso was explained by a Full Bench of this Court as per judgment dated 25.01.2017 in Writ Appeal No. 255 of 2016 (**Ajay Gupta v. State of Chhattisgarh & Others**), the operative portion of which as contained in the last paragraph is as follows:

"In view of the majority judgment rendered, the question referred to the Full Bench is answered in the following terms:

"We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders."

9. From the above, it is quite clear that unless the interim order is having the effect of finality as to the *lis*, appeal is not maintainable. However, there is a case for the Appellant that if there is a total defect/lack of jurisdiction, challenge is maintainable by virtue of the ruling rendered by the Constitution Bench of the Apex Court in ***Kiran Singh and Others v. Chaman Paswan and Others***, 1955 1 SCR 117. This Court is of the view that this aspect could be considered by the learned Single Judge since the writ petition is pending. So far as the present appeal is concerned, admittedly since it is against the interim order, which only directs to effect 50% deposit so as to enjoy the stay in respect of the balance amount and since it is ordered to be kept in a fixed deposit account, subject to the result of the writ petition, no irreversibility is substantiated from the part of the Appellant. As it stands so, we do not find it as a fit case to interfere with the discretion exercised by the learned Single Judge and the challenge is repelled, with liberty to have the matter pursued before the learned Single Judge.

10. However, in view of the fact that the interim order passed by the learned Single Judge is only to ensure the availability of the funds to the extent as specified therein and considering the adverse pecuniary circumstances, if 'cash deposit' is made by the Appellant-Company to the extent of nearly Rs. 28 Crores, to the day

to day activities of the Company, its workers, staff, management and the ongoing commercial transactions, this Court is of the view that interest of justice can be met by setting the Appellant-Company at liberty to provide 'Bank Guarantee' for an equal amount, instead of effecting cash deposit, till the final adjudication of the writ petition. The interim order stands modified only to the above limited extent and the appeal is disposed of.

11. We make it clear that we have not considered the merit of the rival contentions in this appeal. It is open for both the sides to advance the same before the learned Single Judge. It is also open for them to move the learned Single Judge seeking for an early hearing, in view of the nature of the dispute traceable to Annexure P/2 Award dated 30.08.1990, if it is entertained and ordered by the learned Single Judge.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE