

HIGH COURT OF ORISSA : CUTTACK.

W.A. No. 1031 of 2022

(in the matter of an Appeal under
Clause 10 of the Letters Patent
read with
Rule 6 of Chapter-III
of the Rules of the High Court of Orissa, 1948,
and
Article 4 of the Orissa High Court Order, 1948
from the Order dated 06.07.2022 passed
in W.P.(C) No.16412 of 2022
and
Order dated 26.07.2022 passed
in I.A. No.9391 of 2022)

***MINERALS AND METALS TRADING
CORPORATION (MMTC) OF INDIA
EMPLOYEES' ASSOCIATION
PARADIP REGION
REPRESENTED BY ITS
JOINT SECRETARY,
JATINDRANATH SETHI,
AGED ABOUT 53 YEARS,
SON OF
LATE BAISHNAB CHARAN SETHI,
ALOK BHARATI COMPLEX, 7TH FLOOR
SAHIDNAGAR,
BHUBANESWAR – 751 007
DISTRICT : KHORDHA***

...

Appellant

Mr. Manoj Kumar Mohanty,
Advocate

-versus-

UNION OF INDIA & OTHERS

...

Respondents

None

P.T.O.

CORAM:

MR. JUSTICE JASWANT SINGH
AND
MR. JUSTICE MURAHARI SRI RAMAN

ORDER

03.08.2022

Order No.

01.

This matter is taken up by virtual/physical mode.

- 1.** This is an intra-Court appeal at the behest of the Appellant-Minerals and Metals Trading Corporation (MMTC) of India Employees' Association questioning the propriety of Order dated 06.07.2022 passed in W.P.(C) No.16412 of 2022 coupled with modified Order dated 26.07.2022 in I.A. No.9391 of 2022 passed by the learned Singh Judge of this Court.
- 2.** Challenge was laid in the writ petition invoking Article 226/227 of the Constitution of India by the petitioner-Association to the decision of the Board of Directors of MMTC Ltd. vide Office Order dated 22.06.2022 according approval to close down Regional Offices *inter alia* Sub-Regional Office, Bhubaneswar.
- 3.** The case of the appellant-petitioner before the writ Court was that with an objective to export mineral ores, Metals and Minerals Trading Corporation Ltd. ("MMTC Ltd."), a public sector undertaking under the Ministry of Commerce and Industry of Government of India was incorporated on 26.09.1963. Though its Regional Office was initially situated at Paradip, later said Office got shifted to Bhubaneswar and became Sub-Regional Office ("SRO", for short). At present Branch Offices of SRO,

Bhubaneswar of MMTC Ltd. is functioning at Barbil and Paradip. It is asserted with reference to available data since the year 2009-10 that the SRO, Bhubaneswar is the only profit earning Office on account of export of mineral ores in comparison to its Corporate Office.

- 3.1. It is further pleaded that in supersession of earlier Memorandum of Settlement, after discussions between Management of MMTC Ltd. and the representatives of Federation of MMTC Staff Unions, it has been agreed finally between parties on certain terms and conditions. The relevant portion of said Settlement dated 20th November, 2018 so far as required for the present purpose is reproduced herein below:

“Preamble

- 0.5 *Now therefore both the parties have finally agreed that all issues arising out of the charter of demands stand settled and they hereby enter into a settlement on following terms and conditions on the 20th November, 2018.*

1. *Scope & Coverage*

- 1.1 *This Memorandum of Settlement shall cover all regular employees of the Corporation exclusively in the Staff Cadre up to and including Chief Office Managers and equivalent, who were on the rolls of the Corporation as on 01.01.2017 and drawing pay in regular pay scales in terms of Memorandum of Settlement dated 21st January, 2010.*

2. *Period of Memorandum of Settlement*

- 2.1 *This Memorandum of Settlement shall be valid for a period of 10 years effective from 1st January, 2017 to 31st December, 2026.*

14. *Flexibility in the deployment of staff*

- (a) *Considering the volatile business environment and the rapid changes taking place in the business scenario, the Federation appreciates the need of the management for flexibility in deployment of field staff for ministerial work and vice versa necessitated due to closing/opening of offices/godowns etc. and also of deployment of staff from one office to another in the same city (with same HRA rate) where the change of residence is not involved. It is mutually agreed that such transfers/deployment/re-deployment would be to meet the bona fide requirements and staff would not be victimized. It is further agreed that such deployment of staff from field to ministerial and vice versa would not involve female employees and deployment of staff from one office to another in the same city would not affect/alter the existing regional seniority/strength as well as promotional avenues.*
- (b) *Further it has also been agreed that there shall be no protection of allowances and benefits on transfer/redeployment as it goes with the post.*
- (c) *In the event of closure of any office(s), as far as possible, the employee shall be relocated/ redeployed to the nearest office.*

***”

[Emphasis supplied]

3.2. While the matter stood thus, the Board of Directors of MMTC Ltd., Corporate Office in New Delhi decided to close down the SRO at Bhubaneswar by virtue of following Office Order dated 22nd June, 2022:

*“MMTC Limited : Corporate Office : New Delhi
Personnel Division
(SC – I Section)*

No.MMTC/CO/66/P(SC-I)/011 Dated 22.06.2022

Office Order No.SCI/72/2022

The Board of Directors has accorded in principle approval to close down the following Regional Offices and Sub-Regional Office(s) under their charge as soon as possible:

- a) RO-Mumbai : SRO, Ahmedabad*
- b) RO-Chennai : SRO, Bengaluru*
- c) RO-Hyderabad*
- d) RO-Vizag*
- e) Delhi Regional Office: SRO Jaipur*
- f) **SRO-Bhubaneswar***

In addition to above, Board has also resolved to circulate a tentative VR Scheme for all eligible employees.

Accordingly:—

A: Closure of RO/SROs

- I. Upon closure of ROs/STOs, MMTC to have a small representational office designated as Field/Camp Office at the above locations.*
- II. These Field/Camp Offices (except Delhi Regional Office) shall comprise approx. 2 to 5 officers as per operational requirement and would be responsible for monitoring legal and estate matters.*
- III. ROs/SROs to vacate/surrender the present rented/leased office premises and instead hire small premises for Field/Camp Office. Field/Camp Offices may operate from MMTC's residential flats wherever available. For GST purposes and other residual business issues, an office address on nominal payment basis may be taken on rent with the approval of Corporate Office.*
- IV. Other operational issues in Finance and Accounts related issues to be dealt as per applicable rules/procedures in favour of MMTC.*

- V. *Post closure of ROs/SROs and final relieving of VRS optees, residual employees (officers and staff), if any, would be transferees to Corporate Office.*
- VI. *ROs/SROs to take steps to complete the above process within a time frame of 3 months from the date of issuance of this order.*

B. *VR Scheme*

- I. *Board approved VR Scheme is being issued on tentative basis (copy of the VR Scheme circulated enclosed). All eligible employees posted at Corporate Office as well as ROs/SROs, who are interested to opt for VR may forward their names to the General Manager (P), CO and RO Heads of their respective regions, by 13th July, 2022, for a fair assessment regarding the number of employees willing to opt for VR.*
- II. *However, final closure/acceptance of VR requests and relieving thereof, shall however be in terms of VR Scheme approval to be received from Department of Commerce, MOC&I and availability of funds.*

This issues with the approval of Competent Authority.

(Rohit Jonwal)
Senior Manager (Pers.)”

3.3. Being aggrieved by such a decision of the Board of Directors of MMTC Ltd., the petitioner-MMTC Employees’ Association, Paradip Region affiliated to Federation of MMTC Staff Union, submitted representation to the Senior Manager (Pers.) for consideration of plight of employees on 28.06.2022. Since no heed was being paid by the employer-MMTC Ltd., the Appellant-Association approached this Court in W.P.(C) No.16412 of 2022 for ventilation of grievance that by virtue of such decision of the Board of Directors of MMTC Ltd., all the staff except employees

opting for VR Scheme would be transferred to Corporate Office at New Delhi. It is further alleged that such a decision would offend the terms of Memorandum of Settlement dated 20th November, 2018.

3.4. Upon hearing, the learned Single Judge passed the following Order on 06.07.2022:

- “1. Heard learned counsel for the Parties.*
- 2. Even though the Writ Petition involves a challenge to the office order No. SCI/72/2022 dtd. 22.06.2022 at Annexure-4, bringing out the office order closing down of the Sub-Regional Office at Bhubaneswar vide Clause-F therein and further making provisions for the employees either to opt to the VR Scheme likely to come in the meantime, taking this Court to the guarantee provided to the employees through union involving the Memorandum of Settlement finds place at Annexure-3, reading through the Clause-14 therein, Mr. Mohanty, learned counsel appearing for the Association submits that for the condition in the agreement/memorandum understanding between the Parties, there is scope for relocating the person not interested to VRS even in nearest establishment functioning.*
- 3. The entire reading of the brief and considering the submission, this Court finds, there is no application by any employee disclosing not VRS and showing interest for relocation in terms of the agreement condition 14 in the memorandum of understanding under Annexure-3.*
- 4. In the circumstance, this Court finds, the claim made here is premature. At this stage of the matter, Mr. Mohanty, learned counsel appearing for the association seeks withdrawal of the Writ Petition with liberty however to ask its employees to make specific approach, if they are really interested in terms of the benefit guaranteed under Annexure-3. It is open to the employees involved to make such request for consideration of the Competent Authority.*
- 5. With this observation, the Writ Petition stands disposed of.”*

3.5. After such Order being passed, an application being I.A. No.9391 of 2022 came to be filed, which stood disposed of vide Order dated 26.07.2022 with following modification in Order dated 06.07.2022:

“1. This Court finds, there is some error in the mentioning in the order dated 6.07.2022.

2. Considering the request made by Mr. Mohanty, learned counsel for the Petitioner, the sentence “At this stage of the matter, Mr. Mohanty, learned counsel appearing for the association seeks withdrawal of the Writ Petition with liberty however to ask its employees to make specific approach, if they are really interested in terms of the benefit guaranteed under Annexure-3. It is open to the employees involved to make such request for consideration of the Competent Authority.” typed in the 4th paragraph of the order dated 06.07.2022 stands deleted. The other part of the order dated 06.07.2022 remains unaltered.

3. The I.A. stands disposed of.”

3.6. Hence the instant writ appeal.

3.7. Counsel for the Appellant is heard at length.

4. Going by the Memorandum of Settlement dated 20th November, 2018 and the Office Order dated 22nd June, 2022, it gives clear indication that the writ petition is premature as has rightly been held by the learned Single Judge. The petitioner-Union has approached this Court on an apprehension of being prejudiced. This Court wishes to observe that it is the employer who is in a position to decide whether particular unit/office is to be closed or to continue with the business. It is the domain of the employer to see the viability of business in a particular area/place. The Office Order dated 22.06.2022 also envisages option of VR Scheme.

Scrutiny of Clause 14 of said Office Order reveals that in the event of closure of any office(s), as far as possible, the employee shall be redeployed or relocated to the nearest place. No circumstance has been brought on record by the petitioner-Union to the effect to show that as yet any of such term has been deviated. The terms of Office Order, if at all affects, would have impact on individual advantage. Therefore, there is little scope for any prejudice being caused to any of the employees on closure of SRO at Bhubaneswar.

- 4.1. Turning now to the scope of interference with the Order of the learned Single Judge, this Court, with precision held as follows in the case of *Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd. Bhubaneswar & Ors.*, 2020 (II) ILR - CUT- 398:

“Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This writ appeal has been nomenclatured as an application under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 Supreme Court Cases 52, Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple). The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.

In the case of B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh reported in (2006) 13 Supreme Court Cases 449, it is held that in an intra-Court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge. Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the case of Umabai Vrs. Nilkanth Dhondiba Chavan reported in (2005) 6 Supreme Court Cases 243. In the case of Commissioner of Income Tax Vrs. Karnataka Planters Coffee Curing Work Private Limited reported in (2016) 9 Supreme Court Cases 538, it is held that the jurisdiction of the Division Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act concerned (Income Tax Act) and also in the first round of the writ proceedings by the learned Single Judge are not to be lightly disturbed.

Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.”

- 4.2. This Court, having taken into the factors for interference in the Order passed in writ petition, does not find any palpable error so as to show indulgence in writ appeal. Except citing possible

hardship that might be faced by the employees individually in the writ appeal, nothing has been demonstrated having regard to perversity in finding of fact. The counsel for the petitioner has also failed to convince this Court with regard to palpable unreasonableness or inconsistency with any particular position in law *vis-à-vis* Order of the learned Single Judge.

5. In the result, the action of MMTC Ltd. to close its Sub-Regional Office being commercial policy decision does not warrant interference. The apprehension of the Appellant-Association has been held to be premature by the learned Single Judge. No infirmity is found in the decision of the learned Single Judge. Hence, the writ appeal is dismissed.

(JASWANT SINGH)
JUDGE

(M.S. RAMAN)
JUDGE

