

Form No. J.(2)
Item No. 05

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON : 10.02.2023

DELIVERED ON : 10.02.2023

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYA

M.A.T. No. 623 of 2021
With
IA No.CAN 1 of 2021

Indian National Mineworkers' Federation (INMF) & Ors.
Vs.
Union of India & Ors.

Appearance:-

Mr. Soumya Majumder
Mr. Dwipayan Sengupta
Mr. Victor Chatterjee **for the appellants**

Mr. Nilanjan Bhattacharjee
Mr. Rahul Sarkar **for UOI**

Mr. Rabilal Moitra
Mr. Shiv Shankar Banerjee
Mr. Rajit Lal Maitra
Ms. Sanchita Burman Roy **for Coal India Limited**

Mr. Kiron Sk. **for Respondents No.9 to 12**

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal is directed against the order dated 29th June, 2021 passed in WPA 10739 of 2021. By the said order the learned Single Bench declined to grant any interim order but directed the writ petition to be listed for final hearing. The first appellant is the Indian National Mine Workers' Federation and the appellants nos.2 to 6 are the various trade unions. According to the first appellant, it is a federation of various trade unions, which consists of workmen employed in the coal industry. The issue, which is the subject matter of the writ petition is with regard to the constitution of JBCCI-XI for the purposes of bringing out a wage settlement for the employees in the coal industry. The first appellant is an affiliate of the central trade union i.e. Indian National Trade Union Congress (INTUC). JBCCI-XI has been constituted wherein the workmen are represented by the central trade unions. However, for the JBCCI-X, INTUC was not represented on account of internal disputes within the central trade unions and more particularly on account of an order passed by the High Court at Delhi in WP (C) 8152 of 2016 dated 1st August, 2018. Thus, INTUC was not represented in the JBCCI-X. The JBCCI-XI is in progress and the appellants have approached this Court seeking for appropriate interim directions so as to enable the first appellant to participate in consultation representing the workmen in the coal industry. The first appellant claims that it enjoys the patronage of majority number of workmen in the coal industry, which is vehemently objected to and opposed by Coal India Limited.

2. Admittedly, the writ petition is yet to be taken up for disposal. If the matter is allowed to lie over, in all probabilities the writ petition would become infructuous and the JBCCI-XI would get concluded. In this scenario the Court has to examine as to what is to be done. The purpose of constitution of JBCCI is to arrive at a settlement with regard to wage and other issues concerning the workmen working in the coal industry. Therefore the representation should be broad based so that all sections of workmen are adequately represented.

3. The learned senior advocate appearing for the Coal India Limited submitted that there may be hundreds and thousands of unions through out the country and all of them would claim representation in the JBCCI, which is not feasible of compliance. As a general proposition the submission of the learned senior advocate may be right. However, considering the peculiar facts and circumstances of the case on hand, it calls for a different approach. Admittedly, the central trade union (INTUC) had not participated in the JBCCI-X as well as in the meetings of JBCCI-XI which have already been held. We are informed that a couple of more meetings are likely to take place and the entire JBCCI will get concluded by the end of February 2023 or by March 2023.

4. It is seen that the first appellant/Federation had been representing INTUC in all the earlier JBCCI and by way of illustration one memorandum of agreement dated 19th January, 1996 has been placed before this Court from which we find Mr. Damodar Pandey, Vice-President of the first appellant had represented INTUC in the discussion. There are two communications, which are to be looked into, the first of which is a communication placed by the learned senior advocate for Coal India Limited dated 6th May 2021 issued by the Ministry of Coal,

Government of India. The learned senior advocate has drawn our attention to paragraph 3 of the said communication and submitted that it is only the Central Trade Unions operating in the coal industry are entitled to participate in the discussion for protection of wages, social security, fringe benefits etc. of the workers in the coal industry. Therefore, it is a submission made on behalf of the Coal India Limited that neither the first appellant nor the other appellants not being a central trade union cannot participate in the JBCCI-X. However, in the said communication in paragraph no.2 it has been stated that as far as the representation of INTUC is concerned Coal India limited may decide as to which faction of INTUC should be represented in JBCCI taking into consideration the orders issued by the Hon'ble Courts, if any. Thus, the Ministry of Coal has left the decision to Coal India Limited to take a decision as to which faction of INTUC can represent JBCCI-XI. Thus, it goes without saying that if Coal India Limited decides to invite one faction, obviously that faction will not be a central trade union. Therefore, in our understanding the communication of the Ministry of Coal dated 6th May, 2021 does not absolutely bar the federation or trade unions which are affiliates of INTUC to participate in the consultation.

5. More importantly another communication dated 18th October, 2021 from the Ministry of Labour and Employment also concerns the matter which is pending before the Delhi High Court with regard to the *inter se* disputes in INTUC. In the said office memorandum it has been stated that the Ministry of Labour and Employment vide memorandum dated 4th January, 2017 informed not to give representation to INTUC in meetings convened by the Ministry of Labour and nomination of various tripartite bodies including the international

fora under the Ministry of Labour and Employment till finalization of the pending Court cases amongst the factions of INTUC. The next sentence in the said communication is of significance. It states that the said office memorandum dated 4th January, 2017 is not against representation of individual trade union affiliate to INTUC in an organisation/industry. Thus, the Ministry of Labour and Employment deals with all labour issues through out the country regardless of the nature of employment and, therefore, in our understanding the office memorandum dated 18th October, 2021 would assume more significance than the communication of the Ministry of Coal dated 6th May, 2021, which is confined only to coal industry. That apart, office memorandum of the Labour and Employment takes into consideration various categories of employment in which INTUC, the central union will have its members as workmen.

6. Thus, when the first appellant/Federation had been representing INTUC during the period when there were no internal dispute in INTUC, we are of the view that the first appellant should be permitted to participate in the forthcoming meetings of JBCCI-XI. This direction will, however, not impinge upon the contentions that the parties may advance before the learned writ Court.

7. In the result, the appeal is allowed and there will be direction to Coal India Limited to permit the first appellant/Federation which is an affiliate of INTUC to participate in the forthcoming meetings of the JBCCI-XI. As observed earlier, this order is without prejudice to the rights of the parties which they may canvass in the writ petition.

8. Furthermore, we find that there is no rival faction, which has approached this Court by filing an appropriate petition or application, which would fortify our thought process.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J.)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

RAJA/Pallab, AR (Ct.)