

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 3158 OF 2020

Diwakar D. Kode,
aged 58 yrs,
Occ. Chief Manager (Mining) WCL Nagpur
R/o. Flat No. 106, Amlesh Apartment,
Malviya Nagar, Khamla, Nagpur 440 025

.....PETITIONER

..V E R S U S..

1. Coal India Limited,
through Chairman Coal Bhawan,
2nd Floor, Premise No. 4,
MAR Plot No.AF-III 1-A, New town
Rajarhat,
Kolkata 700 156 (West Bengal)

2. Mahanadi Coalfields Limited,
through Chairman Cum Managing Director,
Post Office Jagruti Vihar, Burla,
District Sambalpur 768 020 (Odisha)

..RESPONDENTS

Mr. M.M. Sudame, counsel for petitioner.
Mr. A.R. Patil, counsel for respondents.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 24.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. With
consent, heard finally.

3. The petitioner is assailing the order dated 31.1.2019, passed by the Chairman-cum-Managing Director of Mahanadi Coalfields Limited (Disciplinary Authority) imposing punishment of reduction to lower scale in the time scale for six months with cumulative effect. The Disciplinary Authority found that the petitioner is partially responsible for not initiating action against the successful bidder – Contractor, who did not deposit the performance security and additional performance security. The petitioner was served with the said order while he was posted at the Western Coalfields Limited (WCL) and he preferred appeal provided under the Coal India Limited Executives (Conduct, Discipline and Appeal) Rules, 1978, which the sub-committee of the CIL Board (Appellate Authority) allowed partially vide order dated 17.6.2020 by reducing the punishment to “censure”, which order is also impugned herein.

4. We may note the factual backdrop of the disciplinary proceedings from which the orders impugned emanate.

a) The petitioner is a permanent resident of Nagpur and, as on the date of the institution of the petition, was working as Chief Manager (Mining), Nagpur Area of WCL.

b) While the petitioner was posted as Project Officer, Hingula Opencast Mine of Mahanadi Coalfields Limited (MCL) located in the Sambalpur district of State of Odisha, the Contract Management Cell (CMC) of MCL floated an E-tender notice for “Hiring of Pay Loaders for Mechanical Transfer of Coal into Road Sale Trucks at Pit-Head Stock of Hingula OCP (the subject work).

c) The terms and conditions of the tender document *inter alia* envisaged furnishing of performance security and additional performance security within a stipulated period. In the context of the issue which we are required to address,

elaborate reference to the terms and conditions of the subject work is not necessary.

d) The work order was issued to the Contractor on 31.12.2015. The Contractor was directed to start the work immediately and was advised to deposit the securities as contractually mandated.

e) The Contractor sought the permission of the General Manager for deployment of pay loaders vide letter dated 31.12.2015. The site was handed over to the Contractor on 1.1.2016. On 16.2.2016, the Staff Officer (Mining) advised the Contractor to deposit the securities and enter into formal agreement with the area authority. On 4.3.2016, acting on representation of the Contractor, the Staff Officer (Mining) initiated note which was placed before the General Manager (CMC) MCL. The note was returned back with the endorsement of the GM,(CMC),MCL “kindly take action as per

NIT”.

f) The Staff Officer (Mining) then addressed communication dated 7.4.2016 asking the Contractor to deposit the securities in accordance with the contractual conditions. The petitioner contends, that despite the advise of the competent authority that the NIT conditions be looked into, the Staff Officer (Mining) extended the time to deposit the securities. Petitioner further avers that the copies of the correspondence were, as is the routine, marked to the General Manager and the CMC.

g) The Staff Officer (Mining) then addressed letter dated 18.5.2016 calling upon the Contractor to deposit the securities and enter into the formal agreement, without any further delay. Copy of the said letter was also marked to the GM, Hingola Area and the CMC.

h) The petitioner, who was the Project Officer, Hingola OCP was transferred to the Kaniha Area as Chief Manager (Mining) on 4.6.2016 and he handed over the charge on 12.6.2016.

i) On 29.7.2016, the Engineer-in-Charge/General Manager, Hingola Area conveyed to the Contractor that the securities be deposited at the earliest to avoid further complications. On 2.9.2016, the CMD of MCL issued office order-cum-advisory inviting the attention of the concerned authorities to the execution of the contract works in violation of the conditions of NIT and advising the concerned to scrupulously follow the NIT terms and conditions.

j) The General Manager addressed letter dated 6.9.2016 and informed the Contractor that the performance securities be deposited forthwith and

put the Contractor on notice that the default is viewed seriously by the MCL. The said letter was followed by letter dated 10.9.2016 issued by the General Manager advising the Contractor to deposit the securities on or before 24.9.2016.

k) In the interregnum, the petitioner was transferred as Chief Manager (Mining) on the establishment of the WCL. On 19.9.2016, petitioner received a confidential letter from the Office of the Chief Vigilance Officer (CVO), MCL alleging certain lapses on the part of the petitioner. The said letter highlighted the failure of the Contractor to comply with the general terms and conditions of NIT and assumed that as the Project Officer of Hingola OCP, the petitioner was in a way responsible for not initiating action against the Contractor. On 30.9.2016, acting on the directions of the General Manager, Hingola Area, the Staff Officer (Mining), Hingola Area directed the

Contractor to stop the work.

l) The petitioner addressed explanation dated 16.10.2016 in response to the letter received from the Office of the CVO emphasizing that he had no role to play in the non-compliance by the Contractor of the contractual terms and conditions. Petitioner submitted that he was not the Engineer-in-Charge nor was he authorized by the Engineer-in-Charge to supervise the contract.

m) The petitioner was served with chargesheet dated 9.10.2017. The thrust of the imputations in the chargesheet was that the petitioner did not initiate action against the Contractor for not depositing the securities, and during his tenure from 1.1.2016 to 18.6.2016, he permitted the work to continue.

n) Petitioner submitted reply to the chargesheet.

He emphasized that it was the Area General Manager, who was the Engineer-in-Charge and was responsible for supervising and administering the contact. The Engineer-in-Charge and the Staff Officer (Mining) issued several letters to the Contractor for depositing the securities and execution of the formal agreement and at no point in time did the said officers ask the petitioner to stop the work. The petitioner submitted that there was no financial loss caused to the company and the Contractor continued to execute the subject work even after the petitioner handed over the charge consequent to his transfer.

o) An Enquiry Officer was appointed. The Enquiry Officer permitted the Management and the petitioner to adduce evidence. The petitioner emphasizes that MW1 - Mr. S. Maiti clearly admitted that it was the General Manager, Hingola Area, who was the Engineer-in-Charge and the

petitioner was not authorized to act as such. Mr. S. Maiti further admitted that it was the Engineer-in-Charge, who is responsible for supervising and administering the contract and the final decision as regards the operational aspects of the contract is that of the General Manager, Hingola Area. Petitioner emphasizes, that Mr. S. Maiti admitted that extension letters were issued, copies of which, were marked to the Engineer-in-Charge and General Manager as well as the CMC. MW 2 Mr. Sunil Tripathi admitted that the overall responsibility of supervising and administering the subject work is of the Engineer-in-Charge and that the role of the Project Officer is restricted to work certification, supervision and safety. Significantly, MW 2 admitted that the Project Officer has no role to play in ensuring the compliance of the terms and conditions of the NIT of depositing the securities and execution of the formal agreement. Petitioner submits that MW 3

Mr. S.P. Sethi deposed that the work of the Contractor was satisfactory, that there was no alternate arrangement available and liquidation of the coal stock was necessary to prevent degradation of coal and loss to the company.

p) The petitioner submitted the statement of defence and articulated the various aspects which we have already noted in paragraphs supra. The Enquiry Officer submitted report dated 27.9.2018 which was supplied to the petitioner along with show cause notice dated 27.11.2018. The Enquiry Officer held the petitioner partially responsible in view of the failure to stop the work. The Enquiry Officer, however, accepted the contention of the petitioner that it was the General Manager, Hingola Area, who was the Engineer-in-Charge and the administrator for the subject work. The Enquiry Officer further held that the Engineer-in-Charge is the final authority to supervise the contract.

Having so found, the Enquiry Officer held that the petitioner was made aware of the failure of the Contractor to deposit the securities and it was the duty of the petitioner to apprise the Engineer-in-Charge in writing and to seek advise.

q) The Disciplinary Authority accepted the report of the Enquiry Officer notwithstanding the contentions of the petitioner in the written representation dated 14.12.2018 preferred in response to the findings of the Enquiry Officer. As noted supra, the Disciplinary Authority directed reduction of the pay to lower stage in the time scale for a period of six months with cumulative effect, which punitive order is modified by the Appellate Authority by imposing punishment of censure.

5. Petitioner contends that the punitive order is vitiated by utter perversity. Petitioner would submit that the

charge of misconduct is not proved inasmuch as it is an admitted position on record that the petitioner was not the Engineer-in-Charge, the petitioner was not expected much less obligated to ensure the compliance of the terms and conditions of the NIT or to advise his superior officers that the work of the Contractor be stopped. The thrust of the grounds in the petition, is that the petitioner is victimized and the conclusion of the Disciplinary Authority and the Appellate Authority that the petitioner is partially responsible, is based on no material.

6. Respondents have filed affidavit in response dated 8.2.2023. A preliminary objection to the territorial jurisdiction is raised on the premise that the present posting of the petitioner at Nagpur does not clothe us with the territorial jurisdiction to entertain the grievance and the petitioner ought to have approached either Orissa High Court or Calcutta High Court. On the merits of the matter, the affidavit contends that there is no perversity whatsoever, that the order of the Appellate Authority is speaking and well

reasoned and that the petitioner is indeed partially responsible for permitting the subject work to continue. The affidavit contends that the High Court may not be in a position to re-appreciate the entire evidence and scrutinize the findings recorded by the Enquiry Officer and the Disciplinary and Appellate authorities, in exercise of writ jurisdiction.

7. We have heard learned counsel Mr. M.M. Sudame for petitioner and learned counsel Mr. A.R. Patil for respondents, and with their able assistance, the record is scrutinized.

8. We are conscious that in writ jurisdiction, it would not be permissible to re-appreciate the material on record much less to act as an appellate authority, and we do not intend to indulge in such an exercise.

9. The limitations of writ jurisdiction in disciplinary matters are too well entrenched to copiously refer to the law

which has developed. One situation in which the writ Court may interfere and indeed is expected to interfere with the punitive order, is a case of no evidence or sheer perversity in the sense that on the basis of the material on record, no reasonable person would have arrived at the conclusion which the Enquiry Officer or the Disciplinary Authority did.

10. The site was handed over to the Contractor on 1.1.2016. The petitioner was working as the Project Officer, Hingola OCP till 12.6.2016. The Contractor continued to execute the subject work till the General Manager, Hingola Area stopped the work with effect from 1.10.2016. The petitioner is condemned on the assumption that between 1.1.2016 and 12.6.2016, he did not take effective steps to stop the work.

11. In our considered view, the admitted and incontrovertible position on record renders the finding recorded by the Disciplinary Authority extremely vulnerable. It is an admitted position on record, that as the Project

Officer, the petitioner was not the Engineer-in-Charge. Supervision of the subject work and ensuring the compliance of the terms and conditions of the NIT was not the duty of the petitioner. It is incontrovertible that the officers, who were expected to ensure that the Contractor deposits the securities and enters into a formal agreement, issued several communications, during the tenure of the petitioner by the Staff Officer (Mining) and the Engineer-in-Charge requesting and then directing the Contractor to comply with the contractual terms. We are more than satisfied, that the issuance of the series of communication, not by the petitioner, but the officers who were entrusted with the responsibility of ensuring compliance with the terms and conditions of the NIT, may be viewed as extensions granted to the Contractor to comply with the conditions.

12. Even *de hors* the aspect of the deemed extensions for complying with the contractual terms and conditions, we find it extremely difficult to appreciate the finding of the Disciplinary Authority that the petitioner is partially

responsible for the failure to stop the work. It is irrefutable and indeed an admitted position, that the petitioner could not have stopped the work and such a decision could have been taken, and indeed as was taken some months after the petitioner handed over charge, by the General Manager. The failure of the Contractor to deposit or furnish the securities and to enter into formal agreement was known to every officer concerned. It is not even the case of the Management, that the petitioner had special or exclusive knowledge of any aspect of the default, which he did not share with the concerned authority. We notice that right from the inception of the expiry of the period to furnish the securities, the Officers who could have stopped the work were addressing communications after communications requesting, cajoling and then cautioning the Contractor. The petitioner could have done nothing further, indeed, he was not authorized or empowered to initiate any coercive measures against the Contractor. Such authority vested in the Engineer-in-Charge and the CMC who were, content with addressing request and then cautionary letters to the Contractor and it is only after

passage of four months after the petitioner handed over charge that some action to stop the work appears to have been taken.

13. Considering the glaring facts of the case, we have no hesitation in holding that the punitive order suffers from total non-application of mind and dangerously borders on perversity, inasmuch as on admitted and incontrovertible facts, there is no misconduct made out. Mild as the punishment of censure may appear to be to a layman, considering the long and as it appears from record blemish free service rendered by the petitioner, we see no reason why the stigmatic order which is passed on convoluted process of reasoning should hold the field. We, therefore, disagree with the submission of learned counsel Mr. A.R. Patil that in exercise of writ jurisdiction, it would not be permissible for us to interfere in the punitive orders impugned.

14. Before we part with the order and in fairness with Mr. A.R. Patil, we must consider the submission that the High

Court of Judicature at Bombay, Bench at Nagpur lacks the territorial jurisdiction to entertain the petition.

15. Learned counsel Mr. A.R. Patil has invited our attention to the decision of the Hon'ble Apex Court in ***Eastern Coalfields Ltd. And Others..vs.. Kalyan Banerjee, (2008)3 SCC 456***. The factual matrix was that the services of the employee were terminated at a place in Jharkhand. The petition was instituted at the Calcutta High Court. On facts, the Hon'ble Apex Court held that no cause of action arose within the territorial jurisdiction of the Calcutta High court.

16. Learned counsel Mr. M.M. Sudame has invited our attention to (i) ***Election Commission Vs. Saka Venkata Rao, AIR 1953 SC 210 (Saka Venkata Rao)***, (ii) ***Kusum Ingots & Alloys Ltd..vs.. Union of India and Another, (2004)6 SCC 254 (Kusum Ignots & Alloys Ltd)***, (iii) ***Om Prakash Srivastava vs. Union of India and Another, (2006) SCC 207***, (iv) ***Naval Kishore Sharma vs. Union of India and Others, (2014)9 SCC 329 (Naval Kishore Sharma)***, and (v) ***Shanti Devi alias***

Shanti Mishra vs. Union of India, (2020)10 SCC 766 (Shanti Devi).

17. Mr. M.M. Sudame would submit that part of the cause of action has indeed arisen within the jurisdiction of Nagpur Bench of the High Court of Judicature at Bombay. The facts which according to Mr. M.M. Sudame constitute part of the cause of action are (i) The show cause notice dated 19.9.2016 was received by the petitioner at Nagpur. (ii) It was from Nagpur that the petitioner replied to the show cause notice, supra. (iii) The chargesheet dated 9.10.2017 was issued to the petitioner at Nagpur, and the reply to the chargesheet was submitted by the petitioner while he was posted at Nagpur. (iv) The office order dated 7.12.2017 which appointed the Enquiry Officer was served at Nagpur, and the Enquiry Report was received by the petitioner at Nagpur to which the petitioner submitted explanation from Nagpur. (iv) The order of penalty dated 31.1.2019 is communicated to the petitioner at Nagpur, the appeal is preferred by the petitioner while he was posted at Nagpur and the order of the Appellate Authority is received

at Nagpur.

18. Mr. M.M. Sudame would emphasize that in view of the decision of the Hon'ble Apex Court in ***Saka Venkat Rao*** which held that it was the location or residence of the respondent which conferred territorial jurisdiction of the High Court under Article 226, the Constitution (Fifteenth Amendment) Act, 1963 was enacted and clause 1(A) was inserted in Article 226 which was subsequently renumbered as clause (2) by the Constitution (Forty Second) Amendment Act, 1976.

Mr. M.M. Sudame would invite our attention to clause 2 of Article 226, which reads thus:

“The power conferred by clause(1) to issue direction, orders or writs to any Government, Authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”.

Mr. M.M. Sudame would then argue that it is well

entrenched that since the expression, “cause of action” is not defined in the Code of Civil Procedure or in the Constitution of India, the expression as is understood and explained in catena of decisions must be construed to mean the bundle of facts which the plaintiff or the litigant initiating the lis is required to prove to secure the relief claimed. Mr. M.M. Sudame would submit, that if the facts which are highlighted supra are considered on the touchstone of the decisions of the Hon’ble Apex Court holding the field, part of the cause of action has arisen at Nagpur.

19. In *Kusum Ignots & Alloys Ltd* it is *inter alia* observed that the place where the appellate or revisional order is passed may give rise to cause of part of action notwithstanding that the original order was issued at a different place. It is further observed, invoking the doctrine of forum convenience, that the High Court may refuse to exercise its discretionary jurisdiction in an appropriate cases, even if the High Court finds that some part of the cause of action did arise within its territorial jurisdiction.

20. In *Naval Kishore Sharma*, the facts which were considered were that the petitioner, who was declared permanently unfit by the Shipping Corporation of India, moved back to his native place in Bihar. It was from his native place that the petitioner made the correspondence with regard to the claim for disability compensation. The replies from the erstwhile employer were received at the native place of the petitioner. The letter of rejection of the disability pension was also received at the native place of the petitioner within the territorial jurisdiction of the Patna High Court. The High Court upheld the objection to the territorial jurisdiction and dismissed the petition. The Hon'ble Apex Court observed thus:

“17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an Order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was

sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (dilated cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation”.

We are conscious of the observation of the Hon’ble Apex Court that the impugned order cannot be sustained “**in the peculiar facts and circumstances of this case.**” We seek guidance from the articulation extracted supra to the extent that part of the cause of action is held to have arisen within the jurisdiction of the Patna High Court in view of the fact that the petitioner was compelled to shift to his native place

since he was found medically unfit, that the petitioner addressed communications-cum-representations from his native place and received the communication of rejection of the disability benefit. In the present case, the petitioner was transferred from MCL to WCL and in a sense was compelled to reside at Nagpur which was the place of posting and it was at Nagpur that he was served with the chargesheet and the punitive order. It was further from Nagpur that the petitioner preferred the departmental appeal which was rejected by the order impugned, which was served on the petitioner at Nagpur.

21. In *Shanti Devi*, the husband of the petitioner Mr. B.N. Mishra was employed in CIL. Post superannuation, he shifted to Darbhanga within the territorial jurisdiction of the Patna High Court. He was constrained to approach the Patna High Court in writ petition in view of certain deductions from the retiral benefits. The learned Single Judge dismissed the petition on the ground of lack of territorial jurisdiction inasmuch as the employee served in

the State of West Bengal under authorities and organizations which were located in West Bengal. Mr. B.N. Mishra approached the Jharkhand High Court. During the pendency of the petition, Mr. B.N. Mishra received letter dated 7.10.2013 at his native place in Darbhanga issued by the Office of the Regional Provident Fund Commissioner. By subsequent letter dated 6.11.2013, the said authority directed Mr. B.N. Mishra to refund certain amount alongwith interest and the monthly pension was stopped. Mr. B.N. Mishra then approached the Patna High Court in Writ Petition 5999/2014 challenging the letters dated 7.10.2013 and 6.11.2013. The learned Single Judge noticed the reasons recorded for dismissing the earlier writ petition, and dismissed Writ Petition 5999/2014. Mr. B.N. Mishra preferred Letters Patent Appeal 7265/2017 during the pendency of which he expired and his wife Mrs. Shanti Devi was brought on record as the legal heir. Letters Patent Appeal was dismissed by the Division Bench. In appeal, the Hon'ble Apex Court considered the expression "cause of action", referred to the Three Judges Bench decision in ONGC

vs. Utpal Kumar Basu and answered the issue of jurisdiction thus:

“28. Form the facts of the present case, we are of the considered opinion that part of cause of action has arisen within the territorial jurisdiction of Patna High Court. The deceased petitioner was continuously receiving pension for the last 8 years in his saving bank account in State Bank of India, Darbhanga. The stoppage of pension of late B.N. Mishra affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement. Late Shri B.N. Mishra had opted for receiving his pension in State Bank of India, Darbhabga, State of Bihar, which was his native place, from where he was drawing his pension regularly for the last 8 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. We, thus, are of the view that the view of the learned Single Judge as well as the Division Bench holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner.”

22. While we would refrain from making any general or sweeping observation, and we certainly do not intend to suggest that there can be a straight jacket formula to consider the issue of territorial jurisdiction, the effect or impact of the punitive order may be a relevant consideration in

ascertaining whether a part of the cause of action has arisen within the territorial jurisdiction of the High Court if the punitive orders are assailed. The petitioner had no choice but to reside at Nagpur since he was transferred to Nagpur on the establishment of the WCL. It is after the transfer and posting of petitioner at Nagpur, that the officer of the Vigilance Officer conveyed to the petitioner that certain lapses on the part of the petitioner need to be addressed. It was at Nagpur that the chargesheet was issued, the punitive order communicated and the decision of the appellate authority communicated. Cumulatively, the facts do give rise to part of cause of action. We may further observe, that considering the glaring facts which we have noticed while considering the punitive order, we are not persuaded to invoke the doctrine of forum convenience.

23. In view of the discussion supra, we quash and set aside the orders impugned and allow the petition in terms of prayer clause (B), which reads thus:

(B) quash and set aside the charge memo, dated 9.10.2017, Annexure 24 issued by

Disciplinary Authority and quash and set aside the Memorandum, dated 31.1.2019 of penalty passed by Disciplinary Authority which is at **Annexure 37** and also quash and set aside the order of Appellate Authority, dated 17.6.2020 at **Annexure 39**.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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