

19.11.2024
Sayandeep
Sl. No. ADSL 6
Ct. No. 08

MAT 2063 of 2024
With
CAN 1 of 2024

Ferro Scrap Nigam Permanent Employees' Union,
Burnpur Unit, Asansol & anr.

-Versus
The Union of India & ors.

Mr. Biswaroop Bhattacharyya
Mr. Pratik Majumder
Mr. Snehasish Dey

.... for the appellants

Mr. Bishwambher Jha
Mr. A. K. Dutta

..... for the UOI

Mr. Aritra Basu
Ms. Pallavi Gogoi

....for the respondent No. 5

Let the certified copy of the impugned order filed
in Court today be kept on record.

The instant appeal arises from refusal to pass an interim order. The appellants are the employees' Union of one of the unit of Ferro Scrap Nigam Limited which at one point of time was managed and control as subsidiary of the MSTC. The policy decision was taken by the Government for strategic disinvestment of FSNL which according to the petitioners inculcated a sense of insecurity in their service or the service conditions for which they approached the Court.

The appellants prayed for an interim order so that the process for such disinvestment is kept in abeyance till the disposal of the writ petition. The Single Bench refused to pass an interim order as the Court should not ordinarily interfere with the policy decision of the

Government except on a well settled parameters as laid down in various Judgments.

The FSNL was not yielding any profit and it was initially decided to merge with the MSTC but later on the policy decision was taken for disinvestments of the cent percent share holding of the FSNL through two stage auction processes. The auction was held and the respondent No. 10 herein was adjudged as the highest bidder. The process of transfer of the share was undertaken and it is submitted by the counsel for the appellant that the same in fact has been done. However, our attention is drawn to the minutes of the meeting on a strategic disinvestment of certain CPSEs under the Ministry of Steel where the suggestion was made by the CMD of MSTC that the disinvestment of the FSNL by the private entity does not appear to be an attractive selling proposition. The attention is further drawn to the minutes of the inter ministerial group held on 8th February, 2019 where the suggestion was made from the MSTC that because of the ongoing IPO of the MSTC the process of merger should be kept on hold. Taking a clue therefrom, it is submitted that in fact there was a decision taken by the authorities to merge the FSNL with the MSTC and, therefore, disinvestment by selling the cent percent shares to a private entity is illegal.

However, reliance is further placed upon a report posted on 19th September, 2024 by the Ministry of

Finance where para 11(a) which is relatable to a FSNL employee protection is pressed by the counsel for the appellants to the effect that the certainty in service in the FSNL is at stake as full freedom is provided to a company who have taken over the FSNL either to remove or retrench any of the employees after a period of one year from the closing date other than the termination or the dismissal of an employee.

Clause 11(c) creates an embargo in altering and/or changing the terms of the employment including seniority and the compensation of an employee in any manner within a period of one year from the closing date. In course of the hearing, it is communicated to the Court that the process for taking over of the FSNL is at the verge of completion and likely to be completed in the month of January, 2025. Since the closing date has been indicated, the period of one year has commenced and there is every likelihood of not only removing and/or retrenching the employees but alteration in their service conditions which is not permissible.

The Court should not pass an interim order simply on an apprehension unless there is a convincing materials placed before it. Whether the employees would be removed or retrenched is within the domain of an authority and till the time a decision is taken in this regard, the Court should not pass an interim order keeping the entire process in suspended animation.

At this juncture, it is submitted that the report may be called for to disclose whether they have any intention to alter the condition of service or the decision to be taken to which we do not think that the same should be passed as the cause still appears to be premature. The instant appeal is against a refusal to pass an interim order keeping the writ petition alive by directing the parties to exchange affidavits to which we do not think that any interference is called for.

The appeal and applications are thus disposed of.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)