Kisto Bouri Vs Chief Manager (Mining) Project Officer `

Civil Review No. 99, 101 Of 2022

Court: Jharkhand High Court

Date of Decision: Sept. 10, 2024

Acts Referred:
Constitution of India, 1950 â€" Article 226#Industrial Disputes Act, 1947 â€" Section 33(C)(2)

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: Nipun Bakshi, Shubham Sinha, Anoop Kumar Mehta

Final Decision: Allowed

Judgement

Anubha Rawat Choudhary, J

1. Civil Review No. 99 of 2022 and Civil Review No. 101 of 2022 have been filed seeking review of the order/judgment dated 02.12.2021 passed in

W.P. (L) No. 4842 of 2019 and W.P. (L) No. 7252 of 2019 whereby the writ petitions have been disposed of upon a concession recorded by the

counsel.

2. The order under Review is a common order in connection with four writ petitions being W.P. (L) No. 4842 of 2019, W.P. (L) No. 7058 of 2019,

W.P. (L) No. 7085 of 2019 and W.P. (L) No. 7252 of 2019. By this order, two review petitions arising out of W.P. (L) No. 4842 of 2019 and W.P.

(L) No. 7252 of 2019 are being disposed of.

3. So far as other two review petitions being Civil Review No. 44 of 2022 arising out of W.P. (L) No. 7085 of 2019 and Civil Review No. 100 of 2022

arising out of W.P. (L) No. 7058 of 2019 are concerned, the same have also been allowed by this court vide order dated 12.07.2024 on the ground

that the learned counsel who had given concession on behalf of the workmen in W.P.(L) No. 7085 of 2019 and W.P. (L) No. 7058 of 2019 did not

hold the Vakalatnama and therefore concession of the learned counsel cannot bind the workmen. Consequently, the order dated 02.12.2021 passed in

W.P.(L) No. 7058 of 2019 and W.P. (L) No. 7085 of 2019 were recalled and the writ petitions were directed to be posted before appropriate Bench

for fresh hearing.

4. In the present cases, the learned counsel for the workmen appearing in the two concerned writ petitions being W.P. (L) No. 4842 of 2019 and

W.P. (L) No. 7252 of 2019 was holding vakalatnama on behalf of the concerned two workmen and it has to be examined as to whether the

concession given by the learned counsel for the workmen is binding on the workmen or not.

Arguments of the petitioners.

5. The learned counsel for the petitioners (workmen) submits that the courts namely Labour Court Dhanbad cum Central Government Industrial

Tribunal No. 1, Dhanbad have concurrent jurisdiction to deal with the matter under section 33 (C) (2) of the Industrial Disputes Act and therefore the

orders impugned in the writ petitions passed by learned labour court cannot be said to be without jurisdiction. The orders passed under section 33 (C)

(2) of the Industrial Disputes Act were passed on merits which have been set aside on the submissions made by the BCCL (writ petitioner in both the

cases) that the orders passed under section 33 (C) (2) of the Industrial Disputes Act were without jurisdiction and the learned counsel for the

workmen conceded on the point of law regarding jurisdiction.

6. Learned counsel for the petitioners submits that concession in law is no concession in the eyes of law and there could only be concession on facts

which could bind the party. The learned counsel has submitted that the concession was with regard to jurisdiction upon a submission made by BCCL

that the Labour Court did not have the necessary jurisdiction to pass the orders under Section 33-C(2) of Industrial Disputes Act impugned in the writ

petitions was contrary to law. The learned counsel for the petitioners has relied upon the judgment passed by the HonÃ¢â‚¬â„¢ble Supreme Court reported

in (2014) 14 SCC 77 (State of Rajasthan and Another versus Surendra Mohnot and Others) Paragraph 17

Arguments of the respondents (BCCL)

7. The learned counsel appearing on behalf of the respondents has submitted that the submission was rightly made based on the judgment of the

HonÃ¢â‚¬â„¢ble Supreme Court [S.L.P. Cr. 3546 of 2008] as the identification of the workmen was to be done by the Industrial Tribunal. This is in spite

of the fact that Industrial Tribunal and Labour Court have concurrent jurisdiction with regard to proceedings under Section 33-C (2) of Industrial

Disputes Act.

8. Learned counsel for the respondents has relied upon the judgment passed in (2011) 12 SCC 658 (Vimaleshwar Nagappa Shet versus Noor

Ahmed Shariff and Others) paragraph 14 and (2020) 13 SCC 188 (Om Prakash versus Suresh Kumar) para 15 to submit that the concession

extended by the learned counsel for the petitioner is binding on the petitioner.

Findings of this court

9. The writ order under review recorded the primary contention of M/s. BCCL is in 3rd paragraph which reads as under: -

'Learned counsel for the petitioner has submitted that impugned judgment dated 27.02.2019 passed in M.J. Case No.03/2012 and M.J. Case No.04/2012 as well

as impugned judgment dated 29.03.2019 passed in M.J. Case No.26/2012 and M.J. Case No.25/2012 passed by learned Presiding Officer, Labour Court,

Dhanbad are without jurisdiction as execution cases have been filed before the wrong forum, which ought to have been filed before the Central Government

Industrial Tribunal No.1-cum-Labour Court, Dhanbad to execute the award dated 28.02.1989 in Ref. Case No.68/1983.'

10. The submission on behalf of BCCL as recorded in the writ order are as follows: -

Ã¢â‚¬Å“Learned counsel for the petitioner, Mr. Anoop Kumar Mehta has further submitted that B.C.C.L. has given assurance before the Apex Court in terms of order

dated 28.11.2016 passed in SLP (Criminal) No. 3546/2008, which has been arisen out of a criminal prosecution initiated against the B.C.C.L. to implement the

award passed by the Central Government Industrial Tribunal No. 1 (CGIT), Dhanbad, the M/s B.C.C.L. has deposited a sum of Rs. 5,00,000/- with respect to each

workman.

Learned counsel for the petitioner, Mr. Anoop Kumar Mehta has further submitted that actual amount payable under the award can be computed by the CGIT in a

proceeding under Section 33-C (2) of the Industrial Disputes Act, 1947 and the petitioner has no objection, if the same is done by the CGIT expeditiously, as the

Apex Court has also considered in SLP (Criminal) No. 3546/2008 vide order dated 07.11.2016, that the amount can be disbursed to the workman subject to their

verification by the Central Government Industrial Tribunal (CGIT), Dhanbad, as such impugned judgment dated 27.02.2019 passed in M.J. Case No. 03/2012 and

M.J. Case No. 04/2012 as well as impugned judgment dated 29.03.2019 passed in M.J. Case No. 26/2012 and M.J. Case No. 25/2012 passed by learned Presiding

Officer, Labour Court, Dhanbad may be set aside as the same is without jurisdiction.Ã¢â‚¬â€‹

11. The concession by the learned counsel for the workmen as recorded in the writ proceedings is quoted as under: -

Ã¢â‚¬Å“Learned counsel, Mr. Lukesh Kumar appearing for the workmen has submitted that though the matter is lingering since 1983, but he is ready to concede to

the extent, that if this Court may frame some time period to decide the issue by the Central Government Industrial Tribunal No. 1 (CGIT), Dhanbad in view of the

observation made by the HonÃ¢â‚¬â„¢ble Supreme Court in SLP (Criminal)No. 3546/2008.Ã¢â‚¬â€‹

12. The finding of the learned writ court based on concession by the learned counsel for the workmen appearing in the writ proceedings is quoted as

under: -

Ã¢â‚¬Å“ Considering the submissions on behalf of the workmen, this Court set aside the impugned judgment dated 27.02.2019 passed in M.J. Case No. 03/2012 and

M.J. Case No. 04/2012 as well as impugned judgment dated 29.03.2019 passed in M.J. Case No. 26/2012 and M.J. Case No. 25/2012 passed by learned Presiding

Officer, Labour Court, Dhanbad giving liberty to the workmen to file appropriate application before the Central Government Industrial Tribunal No. 1 (CGIT),

Dhanbad-cum-Labour Court, Dhanbad, under Section 33-C (2) of the Industrial Disputes Act, 1947 for execution of the award dated 28.02.1989 passed in Ref.

Case No. 68/1983.

The workmen must file such application in the format provided by the B.C.C.L. before the HonÃ¢â‚¬â„¢ble Apex Court, before the Central Government Industrial

Tribunal No. 1 (CGIT), Dhanbad-cum-Labour Court, Dhanbad after serving copy of the same to the retainer counsel of the B.C.C.L. namely, Mr. D.K. Verma by

14.12.2021. The B.C.C.L. is directed to file reply to the said application by 21.12.2021.

The workmen are also directed to file document with regard to their identity, which shall be verified by the CGIT in the light of the order passed by the Apex Court

in the case of M/s BCCL Vs. Raghunath Balmiki and Others reported in 1997 SCC 177, which has already been referred in the affidavit filed by the B.C.C.L. in

SLP (Criminal) No.3546/2008.Ã¢â‚¬â€‹

13. On the basis of aforesaid concession made by the learned counsel for the workmen that the amount due to the workman can be paid by the

Central Government Industrial Tribunal No. I at Dhanbad, the orders impugned in the writ petitions which were passed by the learned Labour Court

Dhanbad under section 33(C) (2) of the Industrial Disputes Act, 1947 were set-aside and writ petitions were disposed of.

14. The records reveal that the management of BCCL approached Apex Court in S.L.P. Cr. No. 3546 of 2008 and voluntarily offered to deposit Rs. 5

lakhs in respect of each workman. There was no direction by thr Hon'ble Apex Court that computation can be made only by the Central Government

Industrial Tribunal.

15. In the present case, the concession is on the premise that Labour Court having lack of jurisdiction under Section 33C(2) of the Industrial Disputes

Act and that the Hon'ble Apex Court had given direction to disburse money computed after identifying workmen by following the procedure laid down

in Raghunath Balmiki case (supra). Both these are incorrect on the face of the record. Not only is the Labour Court empowered to decide the claim

under Section 33C(2) of the I.D. Act, there was no direction of the Hon'ble Apex Court to disburse money by following the procedure prescribed in

Raghunath Balmiki case.

16. The concession of the counsel for the workman in the writ petitions was on the premise that Labour Court had no jurisdiction to entertain an

application under Section 33C (2) of the Industrial Disputes Act, 1947 although admittedly, the Labour Court has concurrent jurisdiction with the

Central Government Industrial Tribunal No. 1-cum-Labour Court at Dhanbad. The concurrent jurisdiction is confirmed by S.O. No. 912 dated

23.03.1987 [Annexure-1 to the Review Application] and not disputed by the learned counsel for BCCL.

17. Further, the fact that the petitions under section 33 (C) (2) of the Industrial Disputes Act, 1947 were pending before the learned labour court,

Dhanbad on the 28.11.2016 when the order was passed by Apex Court in S.L.P. Cr. 3546 of 2008 and it certainly cannot be said that the Labour

Court lost its jurisdiction by virtue of order dated 28.11.2016 passed by Apex Court in S.L.P. Cr. 3546 of 2008. The final orders were passed under

section 33 (C) (2) of the Industrial Disputes Act, 1947 by the learned labour court, Dhanbad after full adjudication and were impugned in the writ

petitions filed in the year 2019 and has been set aside on erroneous concession on law by the counsel of the workmen that the Labour Court, Dhanbad

had no jurisdiction to decide the matter under section 33 (C) (2) of the Industrial Disputes Act, 1947.

18. Paragraph 14 of the judgement passed by the HonÃ¢â‚¬â„¢ble Supreme Court in the judgement reported in Vimaleshwar Nagappa Shet v. NoorÃ,

AhmedÃ, Shariff,Ã, (2011) 12Ã, SCCÃ, 658a s relied upon by the learned counsel for the respondent BCCL reveal that concession on fact is

binding on the party. Paragraph 14 is quoted as under: -

Ã¢â‚¬Å“ 14. It is also clear that the High Court has recorded in the impugned judgment dated 3-3-2009 that the counsel agreed with instructions from the plaintiff

and reiterated this fact in its order dated 28-8-2009 in Miscellaneous Civil Application No. 13474 of 2009 in the abovementioned RFA while rejecting the plea of

the counsel for the appellant herein that he did not give consent that he had no instructions from his clients. A concession made by a counsel on a question of fact

is binding on the client, but if it is on a question of law, it is not binding. (Vide Nedunuri Kameswaramma v. Sampati Subba Rao and B.S. Bajwa v. State of

Punjab,)Ã¢â‚¬â€‹

19. Paragraph 15 of the judgement Om Prakash v. Suresh Kumar, (2020) 13 SCC 188, as relied upon by the learned counsel for the respondent

BCCL reveal that the appellant HAD filed review petition before the High Court by engaging another advocate for reasons best known to him and the

HonÃ¢â‚¬â„¢ble Supreme Court observed that they have deprecated the conduct of such petitioners and have opined that such review petitions should not

be encouraged and need to be dismissed. Paragraph 15 is quoted as under: -

Ã¢â‚¬Å“15. As aforesaid, in the present case, the counsel who was engaged by the appellant and had appeared for him before the High Court did not, stricto sensu,

transgress the authority conferred on him by the appellant. Notably, the appellant filed review petition before the High Court by engaging another advocate for

reasons best known to him. This Court has deprecated the conduct of such petitioners and has opined that such review petitions should not be encouraged and

need to be dismissed, as expounded in T.N. Electricity Board v. N. Raju Reddiar Not only that, even before this Court, the appellant, advisedly, showed willingness

to explore possibility of settlement as is evident from different orders recorded above. It is obvious that the delivery of possession of the suit premises, then in

possession of the respondent, was expedited and made over to the appellant only after intervention of this Court, which indulgence was shown because the

appellant had expressed inclination to spare portion of premises for the respondent. Only after this Court intervened, the appellant could take the construction of

the proposed building forward and completed it on 19-6-2018. In terms of the order dated 14-11-2017 of this Court, it was made absolutely clear that the

appellant will not put the newly constructed premises to use without seeking prior permission of this Court. That permission is yet to be given to the appellant.Ã¢â‚¬‹

15. This court is of the considered view that the aforesaid two judgements do not apply to the facts of this case as in the present case the concession

as recorded in the order under review by the learned counsel for the workmen who appeared in the writ proceedings was on law with regards to

jurisdiction and the concession of the counsel was not on fact and further it has not been argued by the learned counsel for the petitioners in these

review petitions with regards to authority of the counsel appearing in the writ proceedings to give concession but the specific argument is that

concession in law is not binding on the party. In the aforesaid two cases cited by the respondent BCCL, the concession of the counsel was essentially

on fact and not on law which was certainly binding on the party.

16. This court is of the considered view that the concession of counsel of the workmen in the two writ proceedings involved in these review petitions

were concession on law which does not bind the petitioners (workmen) and is a valid ground for review. The view of this court is supported by the

judgement passed by the HonÃ¢â‚¬â„¢ble Supreme Court passed in the case reported in (2014) 14 SCC 77 paragraphs 17 to 24 and 28 wherein it has

been held that a concession on facts is only binding and no concession against law can bind a person. Paragraph 17 to 24 and 28 of the said judgment

are quoted as under: -

Ã, Ã¢â‚¬Å“ 17. It is well settled in law that there can be no estoppel against law. Consent given in a court that a controversy is covered by a judgment which has no

applicability whatsoever and pertains to a different field, cannot estop the party from raising the point that the same was erroneously cited.

18. In Union of India v. Hira Lal, it has been held that the concession made by the Government Advocate on the question of law could not be said to be binding

upon the Government.

19. In B.S. Bajwa v. State of Punjab, a Division Bench of the High Court of Punjab and Haryana had granted the relief on the basis of concession given by the

learned Additional Advocate General without considering the effect of the same or of taking into account the inconsistency with its earlier finding. This Court

held that the concession on the point, being one of law, could not bind the State and, therefore, it was open to the State to withdraw and it had been so done by

filing a review petition in the High Court itself.

20. Having stated so, we shall presently proceed to address whether the Writ Court was justified in rejecting the application for review. The order of rejection only

notices that the order was passed on agreement and, therefore, it could not be the subject-matter of review. The learned Single Judge, as it appears, did not think

it appropriate to appreciate the stand of the State and passed an absolutely laconic order.

21. While dealing with the inherent powers of the High Court to review its order under Article 226 of the Constitution in Shivdeo Singh v. State of Punjab the

Constitution Bench observed (AIR p. 1911, para 8) that nothing in Article 226 of the Constitution precludes a High Court from exercising the power of review

which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

22. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, the two-Judge Bench speaking through Chinnappa Reddy, J. observed thus: (SCC p. 390, para 3)

Ã¢â‚¬Å“3. Ã¢â‚¬Â¦ It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude a High Court from

exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors

committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important

matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at

the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any

analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits.

That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all

manner of errors committed by the subordinate court.Ã¢â‚¬â€‹

23. In Thungabhadra Industries Ltd. v. State of A.P., while dealing with the concept of review, the Court opined thus: (AIR p. 1377, para 11)

Ã¢â‚¬Å“11. Ã¢â‚¬Â¦ A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not

consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where

without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably

be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.Ã¢â‚¬â€‹

24. In Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, R.S. Pathak, J. (as His Lordship then was) while speaking about jurisdiction of review

observed that: (SCC p. 172, para 8)

Ã¢â‚¬Å“8. Ã¢â‚¬Â¦ it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the

Court will not be reconsidered except Ã¢â‚¬Ëœwhere a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibilityÃ¢â‚¬â„¢.Ã¢â‚¬â€‹

28. We have already stated the legal position with regard to legal impact as regards the concession pertaining to the position in law. That apart, we think that an

act of the Court should not prejudice anyone and the maxim actus curiae neminem gravabit gets squarely applicable. It is the duty of the court to see that the

process of the court is not abused and if the courtÃ¢â‚¬â„¢s process has been abused by making a statement and the same court is made aware of it, especially the Writ

Court, it can always recall its own order, for the concession which forms the base is erroneous.Ã¢â‚¬‹

17. The setting aside of the final orders under section 33(C) (2) of the Industrial Disputes Act, 1947 passed by learned labour court, Dhanbad by the

writ orders under review on the premise that the orders passed by the learned Labour Court, Dhanbad were without jurisdiction is an apparent error

based on concession of law and has caused grave injustice to the workmen. Such concession on law is certainly not binding on the petitioners (two

workmen). The order of the writ court is required to be recalled in order to prevent miscarriage of justice and the writ petitions are required to be

heard afresh.

18. Accordingly, the present Civil Review petitions filed by the concerned respondents in W.P.(L) No. 4842 of 2019 and W.P. (L) No. 7252 of 2019

are allowed and the order passed in W.P.(L) No. 4842 of 2019 and W.P. (L) No. 7252 of 2019 are recalled and the writ petitions, W.P.(L) No. 4842

of 2019 and W.P. (L) No. 7252 of 2019, are directed to be posted before appropriate Bench for fresh hearing.

19. These civil review petitions are allowed in the aforesaid terms.