
(2003) 03 CAL CK 0019

Calcutta High Court

Case No: Matter No. 2024 of 1993 Appeal No. 764 of 1994

Bharat Coking Coal Ltd.
and Another

APPELLANT

Vs

Sri Tapan Kumar Giri
and Others

RESPONDENT

Date of Decision: March 12, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 21
- Coal India Executives Conduct Discipline and Appeal Rules, 1978 - Rule 4.1, 5.4
- Constitution of India, 1950 - Article 14, 19, 21, 226

Citation: (2003) 3 CALLT 325 : 108 CWN 746 : (2004) 102 FLR 1207 : (2003) 1 ILR (Cal) 545 : (2004) 2 LLJ 763

Hon'ble Judges: Ashok Kumar Mathur, C.J; Jayanta Kumar Biswas, J

Bench: Division Bench

Advocate: S.K. Garai, for the Appellant; Promit Roy, S. Manna and S. Sengupta, for the Respondent

Judgement

J.K. Biswas, J.

In this appeal the judgment and order dated 22nd July 1994 passed by Prabir Kumar Majumder, J (as he then was) in Matter No. 2024 of 1993 (a writ petition) has been impugned. The writ petition was filed by the respondent No. 1 challenging (a) the disciplinary proceeding initiated by charge-sheet dated 2nd November 1992, and (b) the punishment order of dismissal from service dated 3rd May, 1993. By the impugned judgment and order the learned Judge was pleased (a) to set aside the punishment order on the ground that the punishment was disproportionate to the gravity of the proved misconduct, and (b) to grant liberty to appellants to impose any punishment other than the punishment of dismissal or removal from service. By an order dated 16th September 1994, passed in this appeal the operation of the impugned judgment and order was stayed.

2. Bharat Coking Coal Ltd., the appellant No. 1, initiated a disciplinary proceeding against the respondent No. 1 by issuing the charge-sheet dated 2nd November 1992. The charges were (1) failure to maintain absolute integrity, and (2) furnishing false information regarding age. The charges were based on three certificates submitted by the respondent No. 1; those were: - (1) School Final Certificate dated 9th July 1957 issued by the West Bengal Board of Secondary Education, (2) Overmanship Certificate dated 3rd October 1964 issued by the Directorate General of Mines Safety, and (3) Gas Testing Certificate dated 19th March 1976. It was alleged that in all the three certificates the respondent No. 1 tampered with the relevant entry regarding his date of birth for illegally enjoying the benefit of four years' excess service. Stating that his such act amounted to misconduct under Rules 4.1 (i) and 5.4 of the Coal India Ltd. (Conduct, Discipline and Appeal) Rules, 1978, the respondent No. 1 was directed to show cause why he should not be punished.

3. In his reply dated 9th November 1992 the respondent No. 1 admitted that in all the three certificates originally his date of birth had been recorded as 19th February 1938. He explained that his application dated 11th December 1970, offering his candidature for the post of Brigade Member under the Central Coal Mines Rescue Station Committee, Dhanbad, was accompanied by a birth certificate issued by the Contai Municipality (in the State of West Bengal) recording his date of birth as 19th February 1942 and the selection committee, after accepting this date, directed the office (of the CCMRS Committee) to correct his date of birth originally recorded in the said three certificates by the respective issuing authorities. He put up a case that consequently the respective original entries, recording his date of birth as 19th February 1938 in the said three certificates, had been penned through by the office of the Central Coal Mines Rescue Station Committee at Dhanbad, which at once recorded 19th February 1942 as his date of birth in the respective entries of the said three certificates.

4. The Deputy Personnel Manager (NEE) (of Bharat Coking Coal Ltd.), Dhanbad was appointed the enquiry officer. The respondent No. 1 participated in the enquiry with a co-officer as defence helper. The enquiry commenced at Dhanbad on 6th January 1993 and was closed there on 24th March 1993. To substantiate the charges, besides producing various office records, the presenting officer produced in the enquiry a letter dated 1st/2nd September 1992 written by the West Bengal Board of Secondary Education, stating that in the said Board's records date of birth of the respondent No. 1 was recorded as 19th February 1938. In his deposition in the enquiry the respondent No. 1 stated that in the years 1990-1991 he had applied to the said Board for correction of his date of birth recorded in the School Final Certificate dated 9th July 1957. On 27th February 1993 the enquiry officer directed the respondent No. 1 to produce on the next date copy of the application claimed to be made by him in the years 1990-1991 to the said Board for correction of his date of birth. In spite of undertaking to do so, the respondent No. 1 did not produce any copy of any such application before the enquiry officer. The enquiry officer submitted his report recording the finding that the charges levelled against the respondent No. 1 had been proved beyond any doubt.

5- Agreeing with the findings of the enquiry officer, the Chairman-cum-Managing Director of Bharat Coking Coal Ltd. passed the final order dated 3rd May 1993; thereby he imposed on the respondent No. 1 the punishment of dismissal from service with immediate effect.

6. The aforementioned charge-sheet and punishment order were challenged by the respondent No. 1 by filing the writ petition dated 26th May 1993. His grounds of challenge were; (a) the authorities acted without jurisdiction, as the charge-sheet was issued by an incompetent authority; (b) the allegations in the charge-sheet did not constitute misconduct; (c) the enquiry officer acted with bias and closed mind; (d) opportunity to defend effectively was denied by the enquiry officer; and (e) on the facts, the allegation of his tampering with the date of birth recorded in the original certificates was not sustainable.

7. By an order dated 31st May 1993 the said writ petition was admitted; it was admitted keeping the questions of (a) maintainability thereof and (b) the jurisdiction of this Court open for adjudication at the time of final hearing. The appellants contested the writ petition by filing an opposition dated 26th November 1993. The respondent No. 1 filed a reply affidavit dated 19th January 1994.

8. By passing two previous orders dated 18th March 1994 and 12th April 1994 in the case, the learned Judge was pleased to direct the Chief General Manager (legal) of the Coal India Ltd. to place the papers before the Minister-in-charge of the Ministry of Coal of the Government of India. The learned Judge wanted the Minister to consider if any punishment other than dismissal or removal from service could be imposed on the respondent No. 1. The Minister gave his decision dated 4th May 1994; his decision was that ends of justice would be adequately served by modifying the punishment of dismissal to one of removal.

9. The learned Judge finally decided the writ petition by the impugned judgment and order. Regarding the decision given by the Minister, the learned Judge held that he was unable to agree with the conclusion reached by the Minister. The learned Judge did not give any finding on the question of maintainability of the writ petition, or on the question of jurisdiction of this Court, although both the questions had been kept open at the time of admission of the writ petition. The learned Judge did not find any fault in the enquiry. He, however, set aside the punishment order on the ground that though the manipulation of the entries recording date of birth in the relevant certificates as found by the enquiry officer was a serious offence, considering performance of the respondent No. 1 in the service, the authorities should have considered if the punishment of dismissal from service was proportionate to the gravity of the proved misconduct. The learned Judge held that in the absence of any allegation against the respondent No. 1 about his integrity, efficiency, and performance in service, the punishment of dismissal from service was disproportionate and highly excessive. For reaching the said conclusion the learned Judge proceeded on two assumptions: - (i) at the time of considering him for appointment

as Brigade Member in the year 1970 the erstwhile employer of the respondent No. 1 must have examined the questioned certificates together with the certificate issued by the Municipal authority; (ii) the certificate issued by the Municipal authority recording date of birth of the respondent No. 1 as 19th February 1942 must have persuaded the appointing authority (erstwhile employer) into accepting the date of birth as mentioned in the Municipal certificate. He based his assumptions on a finding of fact that all the three questioned certificates (School Final Certificate dated 9th July 1957, Overmanship Certificate dated 3rd October 1964, and Gas Testing Certificate dated 19th March 1976) had been produced by the respondent No. 1 in the year 1970. After discussing the nature of the evidence adduced in the enquiry and analyzing them, the learned Judge recorded that, in his view, it was doubtful whether the respondent No. 1 had actually manipulated the relevant entries in the originals of the three questioned certificates. He expressed the doubt by pointing out the probability that had there been such manipulations, those would have been detected by the authorities at the time of appointing the respondent No. 1 to the post of Brigade Member in the year 1970.

10. Being aggrieved, the appellants have filed the present appeal. It has been contended before us that in the facts and circumstances of the case the learned Judge erred in holding that the punishment of dismissal from service was disproportionate to the gravity of proved misconduct. The further contention is that the learned Judge erred in overlooking the decision given by the Minister pursuant to the previous orders passed in the case by the learned Judge. The learned counsel appearing for the respondent No. 1, besides making oral submissions, has filed written notes of argument. He has assailed the charge-sheet as a stale one, and supported the impugned judgment and order by submitting that the reasons given by the learned Judge for setting aside the punishment order by applying the doctrine of proportionality, in the facts and circumstances of the case, are fully justified and lawful. He has placed reliance on the decision of the Supreme Court given in the case the [The State of Madhya Pradesh Vs. Bani Singh and another](#), and also on two decisions of this Court given in the cases of Tarapada Ghosh v. State and Ors. 1990 (1) CHN 111; and R.K. Gupta v. Coal India Ltd. and Ors. 1992 (2) CHN 130.

11. After hearing the parties and considering the materials on record and the position of law, we are of the view that the impugned judgment and order cannot be sustained, and the writ petition should be dismissed on the sole ground that this Court lacked in territorial jurisdiction to entertain the same.

12. But before we proceed to record our reasons in support of our decision to dismiss the writ petition, we think, it is necessary that we set right certain things that took place because of two interlocutory orders dated 18th March 1994 and 12th April 1994. By the said two orders the learned Judge desired that the Minister-in-Charge should examine the case of the respondent No. 1 for imposing a lesser punishment; the Minister gave his decision dated 4th May 1994 directing substitution of the punishment of dismissal by that of removal.

13. The procedure (of involving the Minister) adopted by the learned Judge, in our view, was not proper. The minister was not a party to the writ petition. Under the relevant rules the Minister was not one of the authorities who could be associated, in some capacity or the other, with the disciplinary proceeding initiated against the respondent No. 1. There is nothing on record to show that the Minister had any statutory power (a) to sit in appeal over, or (b) to review or revise, the decision of the disciplinary authority. On such a factual backdrop, while exercising the power of judicial review available to a Writ Court, there was no scope for the learned Judge to express the desire that the Minister should sit in appeal over the punishment order passed by the disciplinary authority. Inviting the executive, de hors the rules, by the Writ Court, during pendency of a writ petition, to sit in appeal over, or to review or revise the decision (that is, the decision impugned in such writ petition) of a legally empowered disciplinary authority would amount to, as it were, evolving an extra-legal dispute resolution mechanism by the Writ Court. With due respect, we cannot but say that the learned Judge exceeded his jurisdiction in passing the said two orders asking for a decision from the Minister. Hence the Minister's decision dated 4th May 1994 directing substitution of the punishment of dismissal by that of removal must be held to be of no consequence. We direct that it is to be treated as non est, and to be ignored for all purposes.

14. Now we deal with the question of territorial jurisdiction. Keeping the question of jurisdiction of this Court open the writ petition was admitted. It is apparent that the learned Judge, while deciding the case finally, overlooked this question. Admittedly, the appellants also did not agitate this question before the learned Judge; we so hold, because there is no ground in the memorandum of appeal that the question, in spite of being agitated, was not decided by the learned Judge. In our considered view, the question being one of jurisdiction of this Court to entertain the writ petition, should have been decided by the learned Judge, even if the appellants chose not to raise the same. It is the known proposition of law that even consent of parties cannot confer jurisdiction.

15. In our opinion, it is the duty of a Court to satisfy itself about its jurisdiction before entertaining and deciding a litigation. Discharge of such duty is not dependent upon raising a plea by a person qua a party to the litigation. For the proposition we may refer to the law declared by the Apex Court in the case of [State of Rajasthan and Others Vs. Swaika Properties and Another](#),

"Although the powers of the High Court under Article 226 of the Constitution are far and wide and the Judges must ever be vigilant to protect the citizen against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the larger public interest an element of self-ordained restraint. We hope and trust that the High Court will determine the extent of its territorial jurisdiction before making such interlocutory orders."

The said proposition spelt in the context of granting interlocutory orders, in our view, does apply with a greater force at the time of passing the final order in a case in which an adjudication on question of jurisdiction of the Court is predicated by the initial order admitting the case.

16. Interestingly, the plea of lack of territorial jurisdiction of this Court to entertain the writ petition has also not been raised by the appellants as a ground of this appeal. The question, then is, should we decide the question or consciously overlook and ignore it. We are of the view, it is our duty to decide the question; and now we are proceeding to do the same.

17. In the instant case the admitted facts are: - The respondent No. 1 was an employee of Bharat Coking Coal Ltd. having its office at Dhanbad in the State of Bihar. He was posted at Dhanbad. The charge-sheet was issued at Dhanbad. The enquiry was conducted at Dhanbad. The disciplinary authority issued the punishment order at Dhanbad. The punishment order was received by the respondent No. 1 at Dhanbad. In the writ petition no averment was made about the place or places where the cause of action in whole or in part had arisen. Only a bald statement was made in the writ petition that the records of the case were lying in the offices of the authorities within the original side jurisdiction of this Court. The writ petition was filed only for challenging the validity and legality of the said charge-sheet and punishment order. There were seven respondents impleaded in the writ petition. The respondent No. 1 was the Union of India, through the Secretary to the Government of India having his office at New Delhi. The respondent No. 2 was the Coal India Ltd. having its office at Netaji Subash Road, Calcutta-700 001. The other respondents were the Bharat Coking Coal Ltd. and its officials having their offices at Dhanbad in the State of Bihar. No allegation was made or relief was prayed for in the writ petition against the respondents nos. 1 and 2 therein.

18. From the aforementioned undisputed and admitted facts we reach the following conclusions: -

The original side jurisdiction of this Court was sought to be invoked by simply impleading the Coal India Ltd. which was not a necessary or proper party. No part of the cause of the action for challenging the charge-sheet and the punishment order had arisen within the territorial jurisdiction of this Court, The whole cause of action, admittedly, had arisen in the State of Bihar, which is outside the territorial jurisdiction of this Court. This being the position the writ petition could not have been entertained by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. The writ petition is liable to be dismissed on the sole ground of lack of territorial jurisdiction of this Court to entertain the same.

19. Having found lack of territorial jurisdiction of this Court to entertain the writ petition, we, of course, have to dismiss it without entering into the merits thereof. Keeping in mind the principle stated by the Supreme Court in [Oil and Natural Gas Commission Vs. Utpal](#)

[Kumar Basu and Others](#), we are not inclined to exercise our discretion on the basis of the underlying principle of Section 21 of the Code of Civil Procedure, 1908, because, on the facts of this case, we are satisfied that the respondent No. 1 did not file and prosecute his case, in this Court, bonafide. Accordingly we are not entering into the merits of the case, although the decision of the learned Judge was on merit.

In view of the above the appeal succeeds, and the same is hereby allowed. The impugned judgment and order is set aside. The writ petition is dismissed with liberty to the respondent No. 1 to approach the competent forum, in accordance with law, for the same purpose for which it was filed in this Court. There will be no order as to costs.

K. Mathur, C.J.

20. I agree.