(2001) 07 CAL CK 0051

Calcutta High Court

Case No: Writ Petition 8988 (W) of 2001

Colliery Mazdoor Sabha of India		APPELLANT
	Vs	
Board of Industrial Financial Reconstruction (BIFR)		RESPONDENT

Date of Decision: July 23, 2001

Acts Referred:

- Board for Industrial and Financial Reconstruction Regulations, 1987 - Regulation 20
- Constitution of India, 1950 - Article 226
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 25

Hon'ble Judges: Dilip Kumar Seth, J

Bench: Single Bench

Advocate: Subodh Ukil and Chhabi Roy, for the Appellant;Anindya Mitra, Udayen Sen, K.H. Darsan, Mala Chakraborty, Jayanti Dhar Ouader, Asoka Nath Ghosh and Anup Kr. Biswas, for the Respondent

Final Decision: Dismissed

Judgement

Dilip Kumar Seth, J.

The order dated 23-2-2001 passed by the Board of Industrial Financial Reconstruction in Case No. 501 /2000 of Eastern Coalfields Ltd. has since been challenged in this writ petition on the ground that the same order has been passed in violation of sub-paragraph (6) of Regulation 20 of BIFR Regulations, 1987 without giving any hearing to the petitioners as well as the other respondents Union. Relying on the order dated 30-8-2000, Mr, Subodh Ukil, the learned counsel for the petitioners, contends that Form AA which is the foundation for the procedure was not furnished to the Union which was directed to be furnished by the said order dated 30-8-2000 pursuant to which the petitioners had submitted its written statement and representation. Therefore, by reason of sub-paragraph (6) of Regulation 20, it was incumbent on the Board to give hearing to the petitioners as well as the other Unions. Instead of doing so, the Board had passed an order

without giving opportunity of hearing to the petitioners and the other Unions though in the said order dated 30-8-2000 it was pointed out that there would be a next hearing. According to him, hearing was contemplated and the expression ''further hearing may be given or may not be given'' becomes superseded. He further contends that even then the Board has not considered the statement submitted by the petitioners by making representation in terms of the order dated 30-8-2000. Therefore, the order dated 23-2-2001 should be set aside and the matter may be remitted to the Board for taking fresh decision after giving opportunity of hearing to the petitioners as well as the other Unions.

2. Mr. Darsan, the learned counsel appearing for the respondent Nos. 8, 9 and 15 supports Mr. Ukil and contends that there has been a violation of the principle of natural justice inasmuch as no opportunity of hearing was ever given after the order dated 30-8-2000 was passed and before passing the impugned order dated 23-2-2001 despite such opportunity of hearing being mandatory in terms of sub-paragraph (6) of regulation 20 of BIFR Regulations, 1987. Therefore, the said order dated 23-2-2001 should be set aside.

3. Mr. Debasish Kundu, the learned counsel, appearing for the respondent No. 17 had pointed out that in the order dated 23-2-2001 the Board has not considered the statement made by or on behalf of the Union or written statement made. The question is a serious one and should not have been dealt with in the cursory manner as has been made by the said order. Therefore, the order dated 23-2-2001 should be set aside and the matter may be remanded to the Board for passing fresh order after giving opportunity of hearing to the Unions.

4. Mr. Anindya Mitra, the learned counsel, appearing for the respondent Coal India and Eastern Coalfields India Limited on the other hand contended that appeal lies u/s 25 of the Sick Industrial Companies (Special Provisions) Act, 1985 (''the Act'') and, therefore, this writ petition is not maintainable. He further contends that sub-paragraph (6) of Regulation 20 does not postulate giving of hearing as mandatory. It is only that any of the parties want to be heard, he is to intimate the Board about his intention to be heard and only when such intention is intimated, in that event he is allowed hearing. Be that as it may, according to him, in the present case hearing was given on 30-8-2000 when the respective parties made their submissions. He had drawn my attention to the order dated 30-8-2000 to point out that there was nothing to indicate that they were constrained to make their submissions in the hearing in the absence of Form AA. On the other hand, they have made their submissions on merits of their case without reference to any constraint. Thus, the hearing having been given, it does not postulate any further hearing. He further contends that even then such hearing is available to the Union, when the scheme will be considered. According to him, this order will not prejudice the Union in any manner.

5. In reply, Mr. Ukil contended that there are materials to show that the hearing was not given and that the petitioners could not make proper use of the evidence in the absence of the documents which were admittedly supplied to the petitioners after the order dated 30-8-2000. He had pointed out that giving of hearing is not only mandatory but also the absence of it violates the principles of natural justice and as such hearing should be given and this is a fit case for referring the matter back to the Board for rehearing.

6. Mr. Darsan and Mr. Kundu both support Mr. Ukil in reply.

7. I have heard the learned counsel for the respective parties at length.

8. A preliminary objection was taken by Mr. Mitra to the extent that in view of Section 25 having an adequate alternative remedy, this writ petition should be dismissed. Admittedly, Section 25 provides for an alternative remedy by way of appeal whether all these questions can be gone into. But before embarking on the said question we will refer to the merits of the case as contended, namely, whether opportunity of hearing was given and whether such opportunity of hearing was mandatory and that in the absence of it, this Court is empowered to interfere with the order.

9. It appears that the petitioners had submitted written statement before the Board after the order dated 11-1-2000 was passed prima facie treating the company as sick company. It is not disputed that the notices for hearing were given before the Board passed order on the basis of the statement made by the petitioners in its written statement. It appears from the order dated 30-8-2000 that all the Unions were present in the proceedings who were heard. The details of the statements made by the respective parties were also recorded, particularly that of the petitioners was recorded in detail in paragraph 4 of the said order which reflects that on merits the Board was addressed. But it does not appear that there was anything to indicate that the petitioners or any of the Unions were constrained to make their statement in the absence of Form AA though, however, at one point of time certain statements were made for giving inspection of the accounts. But then each of the unions represented had made their statements as recorded in the said order which were taken into consideration. Only in paragraph 23 it has been pointed out that the company had sought for sometime which the Board does not normally allow. But considering that Eastern Coalfields Ltd. being a large public sector company and the promoters were not present in the hearing, the Board had allowed opportunity to the company. At this juncture it was noted that various unions had submitted that they were not given copies of Form AA which was directed to be given within seven days. The unions were asked to submit their representation within fifteen days thereafter. The workers unions were asked to submit specific observation relating to erosion of networth in terms of the Act and the mandatory accounting policies to the Bench within fifteen days. It is further noted in the said order that on receipt of the Company''s statement and those of the other involved agencies, the Bench

would pass further appropriate order with or without holding any further hearing while directing the holding company as Government of India to depute their Senior Officer duly authorised for the next hearing. The representative of the holding company and the representative of Govt. of India were not present on the said day''s hearing. Now it appears that the petitioners had submitted its representations and comments which is Annexure ''L'' to this writ petition. Supplementary comments were also submitted by the petitioners which is Annexure ''P'' to this writ petition. But it appears from the said two comments or representations or written statement that nowhere the petitioners have asked for giving any hearing in terms of sub-paragraph (6) of Regulation 20. There is nothing before this Court to shew that any of the Unions had asked for giving of hearing after the order dated 30-8-2000 was passed in terms of sub-paragraph (6) of Regulation 20. Sub-paragraph (6) of Regulation 20 provides as follows :

"(6) The informant, the concerned industrial company when it is not the informant, and other interested persons, who have sent their comments or suggestions to the Board, and expressed the desire that they would like to be heard and whom the Board may determine to hear shall be intimated about the date of hearing. The persons who have sent their comments or suggestions and intimation that they would like to participate in the hearing shall file with the Board, not less than 10 days before the date of hearing, a written statement containing the gist of the submissions that they would like to make at the hearing."

10. It provides that other interested persons who had submitted comments or suggestions to the Board and had expressed their desire that they would like to be heard and whom the Board may determine to hear shall be intimated about the date of hearing. The persons who have sent their comments or suggestions and intimation that they would like to participate in the hearing shall file with the Board not less than 10 days before the date of hearing, a written statement containing the gist of the submissions that they would like to make at the hearing.

11. Thus, sub-paragraph (6) of Regulation 20 does not postulate giving hearing unless it is asked for. It is at the discretion of the Board to give such hearing or not to give such hearing, even when asked for. In the present case hearing was given and that the petitioners and other Unions had made their submissions. But whether they would be interested in further hearing or not, it does not appear from any of the documents produced before this Court that they had asked for further hearing as contemplated in sub-paragraph (6) of Regulation 20.

12. Be that as it may, it is not necessary to go into such question. But on the face of the documents as produced before this Court, prima facie, it appears that the petitioners had not asked for such hearing as contemplated in sub-paragraph (6) of Regulation 20.

13. However, this finding is tentative since the parties who have not filed affidavits of the petitioners were not given opportunity of detailed hearing. This tentative finding is for the purpose of finding out as to whether this petition should be maintained or the matter be kept open for decision in the appeal since Section 25 provides for an appeal. Therefore, I do not think that at this stage this Court should interfere, prima facie, on the ground that no hearing was given. Admittedly this Court can interfere only when there is violation of the fundamental principle of law or violation of the principle of natural justice and equity which is the accepted proposition of law as was held in the State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd., as cited by Mr. Ukil. The proposition is well-settled and needs no elaboration. Mr. Ukil also relied on the decision in the case of Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, which also propounded the same proposition. He had also restrained himself from multiplying citation on this score.

14. Having regard to the said decision, this Court, if finds that there has been violation of the principle of law or that there has been a flagrant violation of the principle of natural justice and equity, then this Court can invoke writ jurisdiction despite existence of alternative remedy.

15. As discussed above, for the purpose of finding out tentative or prima facie finding, I find that there has been no violation of the fundamental principle of law nor there has been any flagrant violation of the principle of natural justice and equity. However, this finding has been gone into tentatively for the purpose of deciding the writ petition. All points are kept open to be decided by the appellate authority when any appeal is preferred by any of the parties. This point will remain open to be agitated before the appellate authority and the appellate authority shall decide the same, if raised, according to its own wisdom and discretion without being influenced by any observation made in this order.

16. Having regard to the facts and circumstances of this case, I am not inclined to invoke writ jurisdiction in the present case in view of the adequate alternative remedy provided in Section 25.

17. This writ petition is, therefore, dismissed as not maintainable.

18. In case any appeal is preferred and delay is sought to be condoned, the appellants authority shall condone the delay and determine the appeal on its merit as early as possible, preferably within a period of three months from the date of preferring such appeal after giving opportunity of hearing to the respective parties in accordance with law without being influenced by any observation made in this order. All points are kept open.

19. Xerox certified copy of this order, if applied for, be given within seven days from the date of making such application.