Eastern Coalfields Ltd vs Dugal Kumar on 28 July, 2008

Equivalent citations: AIR 2008 SUPREME COURT 3000, 2008 AIR SCW 5055, 2008 (8) SRJ 161, 2008 (10) SCALE 449, 2008 (14) SCC 295, (2008) 10 SCALE 449, (2008) 3 UC 1382, (2008) 4 CALLT 70

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Bench: Lokeshwar Singh Panta, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 245 OF 2004

EASTERN COALFIELDS LTD. ... APPELLANT

VERSUS

DUGAI KUMAR ... RESPONDENT

J U D G M E N T

C.K. THAKKER, J.

1. This appeal is filed by the Eastern Coalfields Ltd. (`Company' for short) against an order passed by the Division Bench of the High Court of Calcutta on January 28, 2002 dismissing Review Petition filed by the appellant herein.

2. The facts of the case are that the appellant is `Government Company' under Section 617 of the Companies Act, 1956. A scheme was formulated by the Company to offer employment to a person who is a land loser for 1 acre of land which has been acquired, purchased or used by the Company. Subsequently, the policy was changed and it was also provided that those who do not intend to get employment may be offered 800 Metric Tons (MTs) of coal in lieu of employment of a family member whose one acre of land has been acquired, purchased or used by the Company. The policy was again modified in 1996 and entitlement was increased to 1600 MTs.

3. It is the case of the Company that it purchased land of the respondent admeasuring 1.26 acres and registered sale deed No. 2006, dated February 17, 1989 was executed at Dhanbad. In the light of the policy then in vogue, the respondent was offered 1008 MTs of coal on the basis of 800 MTs per acre since the sale was for 1.26 acres of land. The respondent accepted the said decision on February 23,

1989 and a written communication was addressed to the General Manager stating therein that the land owner was not interested in getting employment and he would be thankful if 1008 MTs of coal would be given to him. The Authorities accepted the request and the appellant Company vide a letter dated May 22, 1989, passed an order to release 1008 MTs of steam Coal, Grade-D. It was stated that the coal would be released on fulfilling the terms and conditions mentioned in the said communication. According to the Company, everything was over and nothing further was required to be done in the matter. The respondent-writ-petitioner was paid consideration for land which was sold by registered sale deed. Over and above compensation, as per the policy in force, they offered 1008 MTs of coal which was accepted by the respondent and quantity was also released. It was accepted by the respondent without any protest, objection or reservation and the matter ended there.

4. After considerable delay of about a decade, a petition came to be filed being Writ Petition No. 770 of 1999 contending therein that writ petitioner (respondent herein) was entitled to additional quantity of 1008 MTs of coal and an appropriate direction be issued to the Company to release the goods. The writ petition was placed for `first' hearing on September 6, 1999, and on the same day, it was disposed of by the Court observing inter alia that "no affidavit in opposition has been filed", and the learned counsel for the Company submitted that `usual order' be passed in the matter. Accordingly, the Company was directed to allot "balance quantity of 1008 MTs" of coal to the writ-petitioner.

5. The said order read as under;

> "Mr. D.P. Majumdar, Adv. with Mr. G. Patra, Adv. appears and submits.
>
> Mr. A.K. Mitra, Adv. with Md. Iairsh, Adv. appears and submits.
>
> The Court : No affidavit-in- opposition has been filed. The Learned Lawyer for the respondent submits that usual order may be passed in this matter.
>
> Accordingly, I passed the following order:-
>
> The respondents are directed to allot balance quantity of 1008 M.T. to the petitioner in terms of the release order dated 25.5.1989 from Nayandanga Coliery, Mugma Area.
>
> The writ petition is disposed of.

All parties are to act on a signed copy of the minutes of this order on the usual undertaking."

6. It is stated by the appellant-Company that after the order dated September 6, 1999, on September 13, 1999, again the matter was mentioned by the writ-petitioner without filing any application and the High Court modified its earlier order dated September 6, 1999 and the balance quantity which was mentioned in the earlier order of September 6, 1999 as 1008 MTs was enhanced to 6800 MTs. Again, the matter was mentioned on September 15, 1999 and the order was corrected.

7. The Company, being aggrieved by the order passed by the learned Single Judge, preferred an appeal being APOT No. 94 of 2004 challenging the orders passed by the learned single Judge. The Division Bench of the High Court, however, dismissed the appeal on February 17, 2000 observing that when the order was passed by the learned single Judge on September 6, 1999, the counsel for the Company appeared and no reply was filed by the Company. In the circumstances, the Company had "to blame itself". The matter was thereafter taken up by the learned single Judge and even at that stage, no reply was filed. According to the Court, therefore, there was no reason to interfere with the order of the single Judge and the appeal was dismissed.

8. The Company challenged the order passed by the Division Bench of the High Court by filing Special Leave Petition No. 8238 of 2000. When the matter came up for admission hearing, it was withdrawn on May 12, 2000. The said order mentioned that the learned counsel for the Company stated that the Company would file `Review Petition' in the High Court. The special leave petition was accordingly `dismissed as withdrawn'. Thereafter Review Petition was filed by the Company in the High Court and as stated above, the Review Petition was also dismissed by the Court observing that there was "no apparent error to review the order". The said order is challenged in the present appeal.

9. Initially when the matter was placed for admission hearing, notice was issued on August 12, 2002. It appears that the Special Leave Petition was dismissed on February 12, 2003, but the said order was recalled by the Court on September 12, 2003. On January 12, 2004, leave was granted, printing was dispensed with and the appeal was ordered to be heard on SLP paper books. Parties were granted liberty to file additional documents. Original record was requisitioned. Interim stay against the order passed by the High Court was also granted. On March 7, 2008, a Bench of this Court presided over by Hon'ble the Chief Justice of India directed final hearing of the matter during summer vacation and accordingly the matter was placed before us for final disposal on May 27, 2008.

10. We have heard the learned counsel for the parties.

11. The learned counsel for the appellant- Company contended that the orders passed by the High Court are liable to be set aside. It was submitted that admittedly, the transaction of sale took place in Dhanbad. Both the parties

-the appellant as well as respondent - were residing at Dhanbad. The entire cause of action thus arose within the territorial jurisdiction in the State of Bihar (now within Jharkhand area). The High Court of Calcutta, therefore, had no territorial jurisdiction to entertain, deal with and decide the writ petition. On that ground alone, the orders passed by the High Court of Calcutta are liable to be set aside. It was also submitted that admittedly sale deed was executed in February, 1989 by the respondent. The Company paid the amount of consideration and offered 1008 MTs coal under the policy then in force over and above the amount of consideration of property. The writ- petitioner accepted the offer, release order was issued and the goods had been delivered to him which the writ petitioner accepted without any protest or objection. It was after about 10 years that a writ petition was filed which was entertained and orders were passed by the High Court. According to the appellant, there was gross delay and laches on the part of the writ petitioner in approaching the Court and on that ground also, no order could have been passed granting relief in favour of the writ petitioner. Moreover, there was no right-duty relationship between the writ petitioner and the Company. The right of the writ petitioner was limited to consideration in lieu of land sold to the Company. The said amount had already been paid to the writ petitioner. It was only on the basis of the policy that coal was offered to the writ-petitioner. Even if it is assumed that the writ petitioner had right to get coal as per the policy adopted by the Company, the quantity to which the respondent was entitled was given to him. Thereafter there was no cause for making grievance against the Company. It is only on the basis of 1996 Policy that additional quantity was demanded by the writ-petitioner by filing writ petition in 1999 to which there was no entitlement on the part of the writ petitioner. Even on that ground, therefore, the petition was liable to be dismissed. The counsel also argued that when the writ petitioner was paid consideration for land as also coal under the policy in force and when it was accepted without any protest, the writ petitioner was estopped under the doctrine of equitable estoppel to challenge the said decision. By his conduct, writ petitioner made it abundantly clear that he was satisfied as to the quantity which was offered to him and after acceptance thereof, it was not open to challenge the said decision. It was also urged that the learned single Judge was not right in observing that the writ petitioner was entitled to relief as prayed in the writ petition on the ground that no counter affidavit was filed by the Company. The record reflects that writ petition was filed by the writ petitioner on February 18, 1999. It was placed for `first' hearing on September 6, 1999 and on the same day, the matter was disposed of. It was, therefore, not proper for the Court to observe that since no affidavit was filed by the Company, the prayer of the petitioner should be granted. A grievance was also made that even after the decision on September 6, 1999, without there being any application, the order was modified on mentioning the matter and the quantity was enhanced from additional 1008 MTs to 6800 MTs which was clearly illegal and without jurisdiction. In Letter Patents Appeal also, the fact of non-filing of affidavit by the Company weighed with the Division Bench, but as already stated, the matter was taken up and disposed of on one and the same day at the `first' hearing by the learned single Judge and there was no default on the part of the Company. It was submitted by the counsel that when the grievance was made against the order passed by the Division Bench of the High Court in the Special Leave Petition, this Court had observed that the counsel for the Company wanted to file Review Petition and SLP was, therefore, dismissed as withdrawn. But even thereafter the Division Bench dismissed the Review Petition which necessitated the Company to approach this Court again. It was, therefore, submitted that the orders passed by the High Court may be set aside by allowing the appeal and holding that the writ petitioner was not entitled to additional quantity of coal and the High Court

should not have ordered the Company to supply coal.

12. The learned counsel for the respondent-writ petitioner supported the orders passed by the High Court. It was submitted that the learned single Judge was wholly right in observing that no affidavit was filed by the Company. Moreover, the learned counsel for the Company appeared in the Court and made a statement that `usual order' be passed. Accordingly, the order was passed and thereafter it was not open to the Company to raise an objection against such order. An objection as to territorial jurisdiction of the Court also looses its significance in the light of the statement made by the counsel appearing for the Company. In the affidavit-in-reply, it was stated by the writ petitioner that several similarly situated persons were granted the benefit and additional quantity of coal was given to them. Copies of the orders in favour of all those persons were placed on record in the counter-affidavit. It was further stated that the policy was modified in 1996 and additional quantity of coal was given to land losers. Such benefit was also granted to other persons. Refusal to grant similar benefit to the writ petitioner was violative of Article 14 of the Constitution. The counsel submitted that in the circumstances, the Division Bench was right in not entertaining intra-court appeal on the ground that if counter was not filed by the Company, the Company had to thank itself. Again, it is not true to say that liberty was granted by this Court to file Review Petition. Special Leave Petition was dismissed as withdrawn but this Court did not grant liberty to file Review Petition. Hence, the Review Petition itself was not maintainable. The counsel also contended that even in the present proceedings, the prayer is only to set aside an order passed in Review on January 28, 2002. The main order passed in intra-court appeal (dismissing the appeal) has not been challenged. It was, therefore, submitted that on all these grounds, no interference is called for and the appeal deserves to be dismissed.

13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as the technical objection raised by the Company with regard to territorial jurisdiction of the High Court of Calcutta is concerned, in our opinion, it would not be appropriate to set aside the order passed in favour of the writ petitioner on that ground. It is clear from the record that the writ petition came up for admission hearing on September 6, 1999 and the counsel for the appellant-Company was present. Not only that he did not raise any objection as to territorial jurisdiction of the Court, he expressly made a statement before the Court to pass "usual order". Accordingly, an order was passed directing the Company to allot "balance quantity of 1008 MTs" of coal to the writ petitioner. We are, therefore, unable to uphold the contention of the learned counsel for the appellant-Company that the High Court of Calcutta had no territorial jurisdiction to entertain the writ petition.

14. But we are also unable to uphold the contention of the writ petitioner that the appeal is not maintainable since the Company had challenged the order passed in Review Petition dated January 28, 2002 and not the main order dated February 17, 2000 dismissing intra-Court appeal. It was submitted by the learned counsel for the appellant that when Review Petition was dismissed, the order passed by the Division Bench in intra-Court appeal got merged in the order of Review Petition. But even otherwise, when the order passed in the Review Petition is challenged, it would not be proper to dismiss this appeal particularly when leave was granted in SLP after hearing the parties. We, therefore, reject the objection raised by the writ petitioner.

15. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant- Company. It is well-settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ Court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extra-ordinary remedy under Article 226 of the Constitution, that he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.

16. Under the English law, an application for leave for judicial review should be made "promptly". If it is made tardily, it may be rejected. The fact that there is breach of public law duty does not necessarily make it irrelevant to consider delay or laches on the part of the applicant. Even if leave is granted, the question can be considered at the time of final hearing whether relief should be granted in favour of such applicant or not. (Vide R. v. Essex Country Council, 1993 COD

344).

17. In R. v. Dairy Produce Quota Tribunal, (1990) 2 AC 738, 749 : (1990) 2 All ER 434 :

> (1990) 2 WLR 1302, the House of Lords stated;
>
> "The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision making powers for any longer period than is absolutely necessary in fairness to the persons affected by the decision".

18. The underlying object of refusing to issue a writ has been succinctly explained by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong, (1874) 5 PC 221 : 22 WR 492 thus;

> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a. waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

(emphasis supplied)

19. This Court has accepted the above principles of English law. In Tilokchand Motichand v. H.B. Munshi, (1969) 2 SCR 824 and Rabindra Nath Bose v. Union of India, (1970) 1 SCR 697, this Court ruled that even in cases of violation or infringement of Fundamental Rights, a writ Court may take into account delay and laches on the part of the petitioner in approaching the Court. And if there is gross or unexplained delay, the Court may refuse to grant relief in favour of such petitioner.

20. It is not necessary for us to refer to several decisions on this point wherein a similar view has been taken by this Court. Suffice it to say that in Express Publications v. Union of India, (2004) 11 SCC 526, this Court referring to Tilokchand Motichand, Rabindranath Bose and Ramchandra Deodhar v. State of Maharashtra, (1974) 1 SCC 317, explained the principle thus;

> "No hard and fast principle can be laid down that under no circumstances delay would be a relevant consideration in judging constitutional validity of a provision. It has to be remembered that the constitutional remedy under Article 32 is discretionary. In one case, this Court may decline discretionary relief if person aggrieved has slept over for long number of years. In another case, depending upon the nature of violation, court may ignore delay and pronounce upon the invalidity of a provision. It will depend from case to case."

(emphasis supplied)

21. Prima facie, we are satisfied that the learned single Judge should not have entertained a writ petition in 1999 and in directing the Company to release balance quantity of 1008 MTs of coal to the writ petitioner. But as observed earlier, the order was passed in view of the statement of learned counsel appearing for the Company that the Court could pass "usual order" and accordingly the order was passed. It was also stated by the writ petitioner in the counter-affidavit that similar orders were passed in several matters. It would, therefore, be appropriate if we extend the benefit to the writ petitioner of the order passed by the learned single Judge to the extent of "balance quantity of 1008 MTs of coal", which was based on the `statement' by the counsel for the Company.

22. In our view, however, the learned counsel for the appellant-Company is right that after the writ petition was disposed of on September 6, 1999 wherein balance quantity of 1008 MTs of coal was directed to be allotted to the writ petitioner, the learned single Judge was not justified in passing an order on September 13, 1999 on mentioning of the matter without there being any application for modification/clarification of the order dated September 6, 1999.

23. On September 13, 1999, the following order was passed by the learned single Judge;

> "Mr. D.P. Majumdar, Adv. Mentions and submits.
>
> Mr. A.K. Mitra, Adv. Appears and submits.

The Court : The last but third

paragraph of the order dated 6.9.99 is corrected in the manner as follows:-

The respondents are directed to allot balance quantity of 6800 M.T. of Steam Coke, Grade-D quality of Coal to the petitioner in terms of the release order dated 25.5.1989 from Nayandanga Colliery, Mugma Area in terms of Annexure `C'.

The supply is to be effected within a period of eight weeks from the date of communication of this order.

This order is incorporating into the earlier order dated 6.9.99.

All parties are to act on a signed copy of the minutes of this order."

24. We are also of the view that in the light of the above order, the Division Bench ought to have interfered with the direction of the learned single Judge in the order dated September 13, 1999 and intra-Court appeal ought to have been allowed. When the intra-Court appeal was dismissed, the appellant approached this Court by filing Special Leave Petition. It was dismissed as withdrawn as the Company wanted to move the Division Bench in Review Petition. To us, on the facts and in the circumstances of the case, the Division Bench ought to have considered the aforesaid aspect and passed an appropriate order in accordance with law.

25. From the totality of circumstances, we are of the considered view that the respondent- writ petitioner was entitled to the price (consideration) for the land sold by him by registered sale deed to the Company which has already been paid to him. He was also entitled to 1008 MTs of coal which was given to him as per the Policy. He was further entitled to 1008 MTs which has been ordered to be given to him towards "balance quantity" on the basis of statement made by the Counsel for the Company and in terms of `usual order' dated September 6, 1999 passed by the learned single Judge. We are, however, convinced that the learned single Judge was not justified in granting prayer on mentioning the matter on September 13, 1999 without any application for modification of earlier order and direction to the Company to allot to the writ petitioner balance quantity of 6800 MTs of steak coal Grade-D quality. To that extent, therefore, the appeal filed by the Company deserves to be allowed.

26. For the foregoing reasons, the appeal is partly allowed and the writ petitioner is held entitled to 1008 MTs as initially awarded to him as also 1008 MTs of coal towards "balance quantity" as per the order dated September 6, 1999. The writ petitioner will not be entitled to anything more. If the said quantity of coal has already been allotted, the Company has discharged its liability and nothing more is required to be done. But if it has not released the said quantity, the writ petitioner would be entitled to coal to the above extent. On the facts and in the circumstances of the case, there will be no order as to costs.

.....J. (C.K. THAKKER) NEW DELHI,

.....J. JULY 28, 2008. (LOKESHWAR SINGH PANTA)