

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 12th OF JUNE, 2023

WRIT PETITION NO.17086/2022

BETWEEN:-

1. SOUTH EASTERN COALFIELDS LTD.
SOHAGPUR AREA, PO DHANPURI,
DISTRICT SHAHDOL THROUGH AREA
GENERAL MANAGER.
2. SOUTH EASTERN COALFIELDS LTD.
SEEPAT ROAD, BILASPUR (CG), THROUGH
GENERAL MANAGER (P&A)

.....PETITIONERS

*(BY SHRI BRIAN D'SILVA – SENIOR ADVOCATE WITH SHRI
ANOOP NAIR - ADVOCATE)*

AND

1. THE CHIEF LABOUR COMMISSIONER (C),
GOVERNMENT OF INDIA, MINISTRY OF
LABOUR AND EMPLOYMENT SHRAM
SHAKTI BHAWAN, RAFI MARG, NEW DELHI
2. SHRI MUZIBUR RAHMAN, QR. NO. NCH-
B/12, AT & POST SECL, GEVRA PROJECT,
DISTRICT KORBA, CHHATTISGARH.

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI DEVESH BHOJNE – ADVOCATE)

(RESPONDENT NO.2 BY SHRI N.S. RUPRAH - ADVOCATE)

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Reserved on: 14.03.2023

Pronounced on: 12.06.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

The instant petition is pending since 2022. The pleadings are complete and with the concurrence of learned counsel for the parties, who are ready to argue it finally, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners are questioning the validity and correctness of the order dated 03.05.2017 (Annexure-P/1) and order dated 19.05.2022 (Annexure-P/2).

3. The facts in compendium are that the petitioner – South Eastern Coalfields Limited (SECL) is one of the subsidiary companies of the Coal India Limited which is under the administrative control of Ministry of Coal, Government of India. The Company has various mines in the State of Madhya Pradesh and State of Chhattisgarh.

The provisions of Industrial Employment (Standing Orders) Act, 1946 (for brevity “Act, 1946”) is applicable to the petitioner-company. The Standing Orders were made so as to govern the service conditions of the Wage Board Employees i.e. non-executive staff or workmen of SECL. The Standing Orders were certified by the Regional Labour Commissioner (Central) Bombay way back on 08.07.1991.

The certified Standing Orders do not contain any provision showing the disciplinary authority for taking disciplinary action against the Wage Board Employees. However, Clause 2.3 of the certified Standing Orders provides “competent authority” means an officer specially nominated by the Chairman/Managing Director concerned by

an order in writing for the purpose of these standing orders. Such orders shall be put on Notice Board and copies sent to the concerned registered trade unions. In terms of the clause containing “Competent Authority” office order was issued by the-then Chairman-cum-Managing Director, SECL on 31.03.2008 and on 01.04.2008 (Annexure-P/5) mentioning various authorities to exercise the power of ‘Competent Authority for all the provisions of the certified Standing Orders of SECL.

Appointment letters of non-executive cadre i.e. Wage Board Employees is issued either by Area General Manager or Area Personnel Manager after the approval of Area General Manager and for those who are employed at Headquarters Bilaspur by General Manager (P&A).

Respondent No.2, who was employee of SECL filed an application on 16.01.2015 (Annexure-P/16) before the Chief Labour Commissioner (Central) Delhi (for short “CLC”) with regard to delegation of power given to various officers of SECL for taking action against the Wage Board Employees of company. The said claim of respondent No.2 was based upon an information given under the Right to Information Act saying that the Director (P) is the appointing authority and then the CLC started the conciliation process in which the officers of the petitioner-company participated and submitted a reply. Thereafter, vide impugned order dated 03.05.2016, the CLC directed the petitioner-company to amend the certified Standing Orders with regard to delegation of power. Subsequently, after examining the order dated 03.05.2016, the petitioner-company noticed certain discrepancies based on which the incorrect interpretation was done by the CLC.

Thereafter, the petitioner-company preferred a review application before the CLC on 25.02.2020 which was dismissed vide

order dated 19.05.2022. Hence this petition.

4. The impugned order has been assailed on the ground that the authority failed to see that the Area General Manager was the appointing authority and General Manager (P&A) for those employed at SECL headquarters, but not the Director (Personnel) as held by the CLC. The Standing Order very clear describes the ‘competent authority’ and as per the said clause the Chairman-cum-Managing Director has legally nominated the officers to take appropriate action in the disciplinary matters. As per the petitioners, there is no material available on record to indicate that the Director (Personnel) is the appointing authority. According to the petitioners, the CLC ought to have corrected his order.

5. Shri N.S.Ruprah, learned counsel appearing for respondent No.2 raised an objection with regard to maintainability of the petition on the ground that this Court has no territorial jurisdiction to entertain the petition. He submitted that the whole case relates to an issue raised by respondent No.2 who resides at Bilaspur (Chhattisgarh) in which the order was passed by the CLC wherein the petitioners were the non-applicants whose headquarters is at Bilaspur, therefore, at the most the petition could have been filed either before the High Court of Chhattisgarh or before the Delhi High Court. He has also raised an objection saying that this petition suffers from delay and laches as the order was originally passed on 03.05.2016, but review application was filed on 25.02.2020 after delay of almost four years without explaining proper reasons as to why the review application was filed belatedly. According to him, the cause of action does not accrue on the date of dismissal of review application whereas it started from the date of

passing the original order by the CLC. According to him, an alternative remedy of appeal is available to the petitioners and without availing the same, this petition cannot be entertained. According to him, Section 6 of the Standing Order clearly provides an alternative remedy of filing an appeal and without availing the same, this petition cannot be entertained. Lastly, he submitted that this petition deserves dismissal on merits too. To reinforce his contentions, he placed reliance on various decisions *in re Union of India v. Alapan Bandyopadhyay (2022) 3 SCC 133*; *Union of India v. C. Girija and others (2019) 15 SCC 633*; *Santosh Singh v. State of M.P. and others 2013 OnLine MP 6875* and further relied upon an order dated 21.07.2017 passed by this Court in **W.P.No.16517/2016 (Koyla Udhog Kamgar Sangathan v. Chief Labour Commissioner(C))**.

6. I have patiently heard the submissions of learned counsel for the rival parties and thoroughly perused the record with vigilantism.

7. At first, I feel it apposite to deal with the objection relatable to territorial jurisdiction of this Court and about the maintainability of writ petition on that count inasmuch as if it holds the field, all else would fall apart leaving nothing on surface to adjudicate.

8. Indeed, the impugned order has been passed by CLC on an application filed by respondent No.2, who is resident of Bilaspur (Chhattisgarh). The petitioner-company was non-applicant therein having its headquarters at Bilaspur. The description of non-applicant as shown in impugned order of CLC is 'Chairman-cum-Managing Director, SECL, Seepat Road, Bilaspur (Chhattisgarh)'. As per Shri Ruprah, since there accrues no cause of action within the territorial limit of this Court's jurisdiction, therefore, the petition cannot be entertained.

While fulminating about the filing of this petition, he submitted that at-best the petition should have been filed before the Delhi High Court or before the High Court of Chhattisgarh. To strengthen his contentions, he placed reliance on the decision *in re Alapan Bandyopadhyay* (supra) wherein the Principal Bench of CAT New-Delhi exercising the power provided under Section 25 of the Administrative Tribunal Act, 1985 passed an order thereby transferred the case pending before CAT Bench at Calcutta to the Principal Bench, New-Delhi and that order was assailed before the High Court of Calcutta, which got set aside. The Supreme Court observed that the Calcutta High Court usurped the jurisdiction to entertain the petition against the order passed by the Principal Bench of CAT New-Delhi and therefore the order passed by the Calcutta High Court was held 'without jurisdiction'. It is also observed by the Supreme Court that the order passed by the Principal Bench of CAT New-Delhi can be assailed only before the High Court of Delhi. According to Shri Ruprah in the case at hand also, the order passed by CLC cannot be put to test before this Court as no cause of action accrues within the territorial jurisdiction of this Court and therefore the petition becomes dismissive on this count alone.

9. In repartee Shri D'Sliva, learned senior counsel appearing for the petitioners submitted that direction issued by the CLC for amending the Standing Orders has direct implication over the petitioner-company inasmuch as it is one of the subsidiary companies of Coal India Limited and the petitioner-company has various mines in the State of Madhya Pradesh and State of Chhattisgarh. According to learned senior counsel, the provisions of Act, 1946 are applicable to the company and in pursuance to the provisions of said Act, the Standing

Order has been made by the Company to govern certain aspect of service conditions of the Wage Board Employees i.e. non-executive staff or workmen of SECL. He submitted that the said Standing Orders are also applicable to the employees working in the mines of State of Madhya Pradesh and whatever direction issued by CLC in a case filed before it by respondent No.2, has to be implemented in the State of M.P. also and since the order of CLC extricated the right of the petitioners, therefore, they filed a review application before the CLC. Although the review application was not entertained, but the same gave cause of action to the petitioners to challenge the order of CLC before this Court. Moreover, learned Senior counsel submitted that this Court has jurisdiction to entertain the petition in view of the observation made by CLC in paragraph 4, which says that it is the Regional Labour Commissioner (C) Jabalpur who was appropriate authority with proper jurisdiction to certify the model Standing Order of SECL Bilaspur. He accentuated that when the order modifying the model Standing Officer of SECL has been passed by the CLC, the company of Jabalpur SECL has jurisdiction to challenge the said order and therefore they filed review application, although unfortunately that review faced dismissal.

10. Reverently, I have examined the decision, on which respondent No.2 has placed reliance, in which the order was passed by the Principal Bench of CAT New-Delhi while exercising the power provided under Section 25 of the Act, calling the pending case from Calcutta High Court. The said original order of CAT New-Delhi, according to the Supreme Court, cannot be challenged before Calcutta High Court, but in that very judgment, the Supreme Court has also appreciated its another decision *in re Nawal Kishore Sharma v. Union*

of India and others (2014) 9 SCC 329, wherein it has been held as under:-

“16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court’s jurisdiction.”

Juxtaposing the view taken by the Supreme Court *in re Nawal Kishore Sharma* (supra) with the submissions made by the learned counsel for the petitioners that the Standing Order which is directed to be amended by the CLC is also applicable to the employees working in the mines situated within the State of Madhya Pradesh and therefore the writ petition can be entertained by this Court, in my considered view, the objection about maintainability of petition before this Court for want territorial jurisdiction is not insurmountable thus, rejected.

11. Of a note, Shri Ruprah has also raised objection about the maintainability of the petition on the ground that the petitioners have not availed the alternative remedy provided under Section 6 of Act, 1946. To fathom the depth of this objection, it would be indispensable to quote Section 6, which is as follows:-

“**6. Appeals;**- (1) Any employer, workman, trade union or other prescribed representative of the workmen aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the

appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.”

Perusal of Section 6 clarifies that the appeal can be filed being aggrieved by the order of certifying officer passed under subsection (2) of Section 5. However, it is clear from the order which is impugned in this petition passed by CLC is infact not an order under sub-section (2) of Section 5. For the purpose of convenience Section 5 is reproduced hereinbelow.

“5. Certification of standing orders;- (1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with notice in the prescribed form requiring objections, if any, which the workmen may desire to make tot he draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed, an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition tot he draft submitted by the employer is

necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.”

Subsection (2) of Section 5 deals with the situation when any draft Standing Order is prepared and is placed before the Trade Union and in absence of it before the workman inviting objection, if any, and after giving opportunity to the Trade Union or such other representative of workmen, the certifying officer shall decide whether any modification of or addition to the draft submitted by the employer is necessary to render the draft certifiable under this Act and then shall make an order in writing accordingly. This exercise is contemplated under Subsection (2) of Section 5 and that order is appealable under Section 6. In the case at hand, the Standing Order indubitably got prepared and certified on 08.07.1991 and is available on record as Annexure-P/3 and P/4. Therefore, in my opinion, the objection raised by the counsel for respondent No.2 with regard to availability of statutory alternative remedy of appeal as per Section 6 of Act, 1946 is without any substance because such remedy is not applicable in the fact-situation of the case at hand as the impugned order is not an order passed under Subsection (2) of Section 5 by the certifying officer. Of a further note, if at all, any order is passed under Subsection (2) of Section 5, it can be assailed only within 30 days from the date when copies of the order are sent under subsection (3) of Section 5. Thus, the impugned order is not appealable

as per the requirement of Section 6. Ergo, this objection being misconceived, is hereby overruled.

12. Shri Ruprah has also tried to raise clouds over the petition on the ground of delay. According to him, the impugned order was passed on 03.05.2016 whereas the review application was filed on 25.02.2020 i.e. after almost four years and the order on review application was passed on 19.05.2022. The instant petition has been filed on 22.07.2022 without explaining the delay for not challenging the original order passed on 03.05.2016. As per the counsel, in view of the decision *in re C. Giriraj* (supra), merely because review filed and entertained although dismissed by the authority, did not give any fresh cause of action to the petitioners for challenging the original order.

13. Instinctively, I feel it insignificant here to touch the question of delay, but at the same time it is kept intact to answer at later part of this order with emerging reasons.

14. Albeit, multifarious counter submissions have been urged by rival litigators in favour/against the impugned order, but something unspoken hung in the air about the jurisdictional limit of the CLC. A deeper look to the submissions and perusal of record vis-a-vis the provisions of Act, 1946, a pivotal question drifted toward the surface is whether the impugned order passed by CLC is within or beyond its jurisdiction.

15. From perusal of the impugned order, it is clear that the authority has observed that the model Standing Order of SECL was certified on 08.07.1991 by the-then RLC (C) Bombay namely Shri S.K. Mukhopadhyay. This observation is made in paragraph 10 of the impugned order giving seal of approval by CLC to the Standing Order

of SECL Bilaspur. Once it is found that the Standing Order is finally certified then under Section 10 of the Act, 1946, it can be modified before the expiry of six months from the date of its final certification, that too by an agreement between the employer and the workmen, but thereafter it cannot be modified. Glimpse of Section 10 is expedient therefore it is reproduced hereunder:-

“10. Duration and modification of standing orders;-

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modification thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.”

The aforesaid provision makes it clear that once Standing Order is certified, where even within the expiry of six months no modification or amendment got done therein, then further there cannot be any

modification made therein by any certifying officer. Once the period as has been specified under Section 10 of Act, 1946 is over and procedure prescribed therein is remained un-adopted for seeking any modification in the Standing Order, there is no other remedy available for seeking modification, although Section 13-A of Act, 1946 provides if any difficulty arises in the application or interpretation of the Standing Order then employer or workmen can approach the Labour Court. Section 13A of Act, 1946 is quoted hereunder for ready reference;-

“13A Interpretation, etc., of standing orders;- If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman or a trade union or other representative body of the workmen may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947(14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.”

Considering the aforesaid provision, it crystallizes that after certifying the Standing Order finally as per Section 10 of Act, 1946, no other remedy is available under the Act, 1946 to seek modification in the Standing Order except for availing the remedy as provided under Section 13A of Act, 1946. As a matter of fact, neither employer nor workmen applied the said remedy, although a representation was made by respondent No.2 to CLC pinpointing the defect in the Standing Order, which got finally certified on 08.07.1991. The impugned order also depicts that against the said Standing Order, appeal was also preferred under Section 6, but that appeal was also decided and

thereafter the order passed by the appellate authority has attained finality and was binding upon the parties as per the provisions of Section 6 of Act, 1946. Thus, in my opinion merely because representation was filed by respondent No.2 before CLC and when the representation remained undecided, sought direction from Delhi High Court for CLC to decide the representation, does not mean that CLC acquired the jurisdiction to pass an order directing employer to modify the Standing Order which is already certified on 08.07.1991. The order passed by the CLC is accordingly without any jurisdiction.

16. Astoundingly, the question of jurisdiction has not been raised by the litigators, but since it goes to the root of the matter and successively got emerged, therefore, to meet the ends of justice, such question is decided by this Court. Essentially, the consideration on the point of delay was left intact in preceding paragraph, however, in view of discourse made hereinabove, I am reluctant to deal with the point of delay inasmuch as it is a settled principle of law that if any order passed by the authority/court is without jurisdiction, it can be assailed at any time. {Reference is made from the decisions *in re Balvant N. Viswamitra and others v. Yadav Sadashiv Mule (dead) through LRs and others (2004) 8 SCC 706* and *Chief Engineer, Hydel Project & Ors. v. Ravinder Nath & Ors. AIR 2008 SC 1315*}. Thus, on mature consideration, I find the impugned order dated 03.05.20216 (Annexure-P/1) passed by CLC as without jurisdiction and is hereby set aside and consequent thereto, order dated 19.05.2022 (Annexure-P/2) is also set aside.

17. *Ex consequentia*, the petition is **allowed**. However, at the closing juncture, it needs to be emphasized that the aggrieved party may

avail the remedy provided under Section 13A of Act, 1946. If that is done, the competent court will decide the appeal in accordance with law.

(SANJAY DWIVEDI)
JUDGE

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