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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) No. 188 OF 2014

PETITIONER :

Jai Gobind Singh, S/o Dinesh Prasad Singh, aged about 53 years, working as General Manager (Mining) / Agent, Dipka Area of S.E.C.L., Distt. Korba (C.G.)

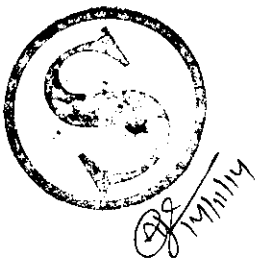
188/14
Vardhey
23/9/14

VERSUS

RESPONDENTS :

1. Union of India, through its Secretary, Ministry of Labour, Shram Shakti Bhawan, New Delhi
2. The Assistant Labour Commissioner (Central), Torwa, Bilaspur (C.G.)
3. The Presiding Officer, Labour Court, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA



A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH:HON'BLE SHRI JUSTICE SANJAY K. AGRAWAL

Writ Petition (L) No.181 of 2012

PETITIONER : Subodh Shrivastava

VERSUS

RESPONDENTS : Union of India & Others

Writ Petition (L) No.129 of 2014

PETITIONER : Ajay Nam Joshi

VERSUS

RESPONDENTS : Union of India & Others

Writ Petition (L) No.130 of 2014

PETITIONER : M. Yellaiah

VERSUS

RESPONDENTS : Union of India & Others

Writ Petition (L) No.131 of 2014

PETITIONER : Om Prakash Katare

VERSUS

RESPONDENTS : Union of India & Others

Writ Petition (L) No.132 of 2014

PETITIONER : Shri Harjit Singh Madan

VERSUS

RESPONDENTS : Union of India & Others

Writ Petition (L) No.134 of 2014

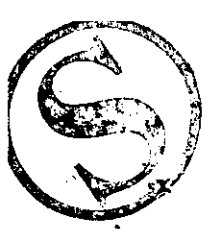
PETITIONER : Satyapal Singh Bhati

VERSUS

RESPONDENTS : Union of India & Others

Writ Petition (L) No.188 of 2014PETITIONER : Jai Gobind SinghVERSUSESPONDENTS : Union of India & OthersWrit Petition (L) No.194 of 2014PETITIONERS : U.A. Kaole & anotherVERSUSESPONDENTS : Union of India & OthersWrit Petition (L) No.167 of 2012PETITIONER : A.S. BabuVERSUSESPONDENTS : Union of India & OthersWrit Petition (L) No.168 of 2012PETITIONER : S.K. PalVERSUSESPONDENTS : Union of India & Others&
Writ Petition (L) No.180 of 2012PETITIONER : U.K. SinghVERSUSESPONDENTS : Union of India & OthersPETITIONS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIAPresent:

Shri Vinod Deshmukh, Shri Vivek Verma and Shri Vaibhav Shukla, Advocates for the petitioner.
 Shri NK Vyas, Assistant Solicitor General for Union of India/respondent No.1 & 2.
 Shri PK Bhaduri, Govt. Advocate for the State/respondent No.3.



O R A L O R D E R
(Passed on 31.10.2014)

1. In all the writ petitions, identical question of fact and law are involved, therefore, they are directed to be heard analogously and are being disposed of by this common order.
2. South Eastern Coalfields Limited (for short, SECL)(petitioner No.2 in WPL No. 194 of 2014) is a subsidiary company of Coal India Limited and it has a various sub areas in the State of Chhattisgarh as well as in the State of Madhya Pradesh having more than 77,000 employees. In coal mines, the Coal India works on a three tier systems i.e. Company, Area and Unit level. Section 3 of Industrial Disputes Act, 1947 (for short, ID Act) provides that In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment and it will the duty of the works committee so constituted to promote measures for securing and preserving amity and good relations between the employer and workmen.
3. Under section 36-B of the ID Act, power is conferred to the appropriate government to exempt any industrial establishment from the operation of Section 3 of the ID Act by notification in the

official Gazette conditionally or
unconditionally.

4. The Coal India Limited holding company of which SECL is a subsidiary company, has filed an application claiming exemption from constituting Works Committee as required under Section 3 of the ID Act. It has further been pointed out that SECL and its officers filed batch of writ petitions before the High Court of Madhya Pradesh seeking rejection of the application for exemption from constitution of works committee by order dated 20.03.2013 declining to grant exemption from requirement of formation of works committee.
5. The High Court of Madhya Pradesh in case of **South Eastern Coalfields Ltd. v. Union of India** (WP No. 8368 of 2013) by order dated 20.09.2013 allowed the petitions and quashed the order rejecting application filed under Section 36-B of the ID Act and directed the Union of India/appropriate Govt. to consider and decide the application of Coal India for exemption afresh in the light of Section 36-B of the ID Act.
6. It is the further case of the petitioners that though the application for exemption filed by the Coal India is still pending consideration after the order of MP High Court, but on the basis of complaint filed by the respondent No.2, the respondent No.3 has taken cognizance of the matter and issued notice vide Annexure P/1 to answer the authority as provided in Section 31(2) of the ID Act, and therefore, such action is

illegal, arbitrary, and as such, respondent No.1/appropriate Govt. be directed to decide the application for exemption filed by the Coal India.

7. The Union of India has filed its counter affidavit stating inter alia that petitioners have statutory alternative remedy of filing of Revision before the Industrial Court against the process issued by the Labour Court, and thus, these writ petitions are not maintainable and deserve dismissal.
8. Shri Vinod Deshmukh, learned counsel appearing for the petitioners would lastly submit that order passed by the respondent No.1 rejecting their applications for exemption filed under Section 36-B of ID Act has already been quashed by the MP High Court in case of **South Eastern Coalfields Ltd (Supra)** and the matter has been remanded back to the respondent-Union of India to decide afresh their applications and protective order has already been granted by this court, but the respondent Union of India has not taken any decision on the said application and respondent No.3 is issuing process at the instance of respondent No.2, and therefore, appropriate writ be issued directing the respondent No.1 & 2 to decide their pending applications for exemption and till then interim relief granted earlier be continued.
9. Shri NK Vyas, learned counsel appearing for the respondent-Union of India would submit that at present there is no exemption operating in their

favour, therefore, submission of charge-sheet and taking cognizance by the respondent No.3 is absolutely justified. He would further submit that petitioners have statutory alternative remedy of filing of Revision before the Industrial court against the order directing taking of cognizance.

10. I have heard the counsel appearing for the parties, considered their rival submissions and perused the order impugned.

11. After hearing learned counsel for the parties and perusal of record, the following facts would emerge :

- That, holding company of Coal India has made application well within the time seeking exemption from constituting works committee as required under Section 3 of the ID Act.
- That, application was considered and rejected by the respondent No.1 herein by order dated 20.03.2013.
- Said order dated 20.03.2013 passed by the respondent No.1 rejecting the applications for exemption from constituting works committee was challenged by the SECL in WP No. 8368 of 2013 before the High Court of Madhya Pradesh.
- That, High Court of Madhya Pradesh by order dated 20.09.2013 quashed the order dated 20.03.2013 passed by respondent No.1

rejecting application for exemption under Section 36-B of the ID Act.

12. At this stage, it would be appropriate to notice paragraph 15 of order dated 20.09.2013 passed by the High Court of Madhya Pradesh in case of **South Eastern Coalfields Ltd (Supra)**, which reads as under :

"On the basis of aforesaid analysis, in my opinion, the respondents utterly failed to examine the application of the petitioner seeking exemption as per relevant considerations and test laid down in Section 36-B of the ID Act. Thus, the impugned order Annexure P/1 cannot be permitted to stand. Accordingly, Annexure P/1 is set aside. Respondent shall decide the application of exemption of CIL afresh in the light of Section 36-B of the ID Act. Till such decision is taken, no coercive action be taken against the petitioner."

13. The fact remains that application seeking exemption filed by the holding company-SECL under Section 36-B of ID Act is pending consideration before the respondent No.1-Union of India. It has already been directed by the MP High Court to appropriate Govt. to decide the application of Coal India/SECL in the light of Section 36-B of the ID Act, but till date no decision has been taken as informed by the standing counsel for Union of India, as per instruction, which he received vide communication dated 10.10.2014.

14. In a decision passed in **Indian Charge Chrome Ltd. & Another v. Union of India & others**¹ their Lordships of Supreme Court pertinently held as under:

¹2003 (2) SCC 533



"The Central Government and the State Government are statutory authorities. They must, thus, act within the four corners of the statute. When an order is meant to be passed by the State Government or the Central Government the same must be passed by an authority competent therefor."

15. After hearing counsel for the parties, this court is of the opinion that since the application filed by the Coal India i.e. holding company of SECL claiming exemption under Section 36 of the ID Act from constituting works committee under Section 3 of the ID Act is pending consideration before the appropriate govt. i.e. Union of India, the same has to be decided by the respondent No.1-Union of India in accordance with law, therefore, it would be expedient to dispose of all these writ petitions relating to exemption u/s 36-B of the ID Act. Accordingly, it is directed that respondent No.1 shall take decision on the said application expeditiously. It is further directed that till that application is finally decided, no co-ercive steps shall be taken against these writ petitioners.
16. With the aforesaid observations, all the writ petitions stand finally disposed of in terms indicated hereinabove.
17. It is made clear that this court has not expressed any opinion on the merits of the case.
18. A copy of this order be placed on records of other connected matters.

Sd/-
Sanjay K. Agrawal
Judge