

Smt. Bhagwati Debi Goenka

Vs

Kishorilal Goenka and Others

Civil Misc. Petition No. 4807 of 1971 in Civil Appeal No. 2459 of 1969

(K.S. Hegde, A.N. Grover JJ)

14.09.1971

ORDER

1. Herein we are asked to restrain the Receiver by means of an injunction from appointing the respondent Kishorilal Goenka as his agent to work Pit 1 in the Colliery in dispute. Alternatively we are asked to close down that pit.

2. The Receiver was appointed for managing that pit. He was authorised to appoint an agent for working the pit in question. He first came to the conclusion without any objection from the parties that it would be in the interest of the company if one or other of the parties to the litigation is appointed as agent. That conclusion of his is not challenged before us. Thereafter he tried to select from among the parties one of them to be his agent for running the pit. With the agreement of the parties he adopted the basis that the party who is prepared to agree to give a guarantee of the highest minimum profit should be selected as the agent. At first he suggested that Rs. 1.50 per tone would be the proper minimum guarantee. Both the parties represented to him that it would not be possible to give that guarantee. The wanted him to reduce the minimum guarantee. He accordingly reduced the minimum guarantee to Re. 1 per tonne. But both sides again represented that that guarantee too was on the high side. Hence another meeting was held on July 20, 1967 to decide the matter. He informed the parties on that day that he has finally come to the conclusion that the minimum guarantee should be 90 n.p. tonne plus the establishment expenses and the party who is prepared to give that guarantee would be appointed as his agent. The parties wanted some time to consider that offer. For that purpose he adjourned the matter to August 2, 1971. When the parties met on August 2, 1971, Solicitor for the petitioner represented that the minimum guarantee suggested on the previous occasion was high and the receiver should reduce the same. But the Solicitor for the respondent Kishori Lal Goenka - who will be hereinafter referred to as the respondent - represented that his client accepts the offer made by the Receiver. After the Solicitor for the respondent accepted the offer of the Receiver, the Solicitor for the petitioner said that his client was also willing to accept the offer made by the Receiver. The Receiver was evidently in a fix at that stage. He adjourned the matter for further consideration. Before the adjournment date, he received a communication from the Solicitor for the petitioner that his client was willing to give a minimum guarantee of Rs. 1.25 per tonne but that sound be inclusive of the administration charges. This was really a counter offer. Meanwhile, it appears that the respondent advanced the contention that the receiver's final offer having been accepted by him on August 2, 1971 there was a concluded contract and the Receiver was bound by it. The Receiver did not know how to solve this difficulty. Hence he consulted the Advocate General of West Bengal. It is seen from the proceedings maintained by the Receiver that there was a meeting at the house of the Advocate General of West Bengal. At that meeting, apart from the Receiver, the Solicitor for the petitioner as well as the Solicitor for the respondent were present. After discussing the matter with all of them the Advocate General of West Bangle appears

to have advised the Receiver that there was a concluded contract between him and the respondent on August 2, 1971. Acting on the basis of that advice, the Receiver appointed the respondent as his agent to work Pit 1.

3. From the facts set out earlier, it is absolutely clear that the receiver had acted in the most proper manner. There is no basis for the allegation made by the petitioner that he had been coerced to appoint the respondent Kishori Lal Goenka as his agent. The fact that at one stage the respondent had filed an application to this Court to remove the receiver can in no manner be said to have influenced to decision of the receiver to appoint the respondent as his agent. There are no grounds to think that the receiver had acted either improperly or under coercion. The petitioner has not pressed prayer to close down Pit 1.

4. We see no merits in this position. It is accordingly dismissed. No costs.

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