M/S. Central Coal Fields Ltd. and Another

Vs

M/S. Jaiswal Coal Co. and Others

Civil Miscellaneous Petition No. 9853 of 1980

(CJI Y. V. Chandrachud, V. R. Krishna Iyer, D. A. Desai, A. P. Sen, E. S. Venkateramiah, P. N. Bhagwati, V. D. Tulzapurkar, Syed M. Fazal Ali, P. N. Shinghal, R. S. Pathak, Jaswant Singh, P. S. Kailasam, A.D. Koshal, N. L. Untwalia, O Chinnappa Reddy, R. S. Sarkaria JJ)

07.10.1980

ORDER

KRISHNA IYER, J. –

1. "All is well that ends well" and that way we have something happy to believer in this short order. Even so, this litigation has lessons to teach and promises to keep and surely bears testimony to many a bane of the Indian litigative process.

2. The respondent, claiming to be a firm doing business in coal, brought a suit before the District Court for a few ambitious crores of rupees be way of damages against the petitioner herein, a public-sector corporation owned by the Central Government and engaged in mining coal and making it available to the community. This adventurous litigant, according to the Corporation, instituted the present suit for recovery of an astronomical sum hoping that by this strategy it could do business by abusing the process of the court, pressurise the State to settle with it and thus obtain a large profit through the speculative business of a suit. Its investment was nil because it took care to exaggerate the claim to such an unlimited figure that the court fee was colossal enough to give it the advantage of being treated a pauper. While it is deplorable that some speculators gamble in litigation using the stratagem of pauperism, it is more deplorable that the culture of the magna carta notwithstanding the Anglo-Indian forensic system - and currently free India's court process - should insists on payment of court fee on such a profiteering scale without correlative expenditure on the administration of civil justice that the levies offen smack of sale of justice in the Indian Republic where equality before the law is a guaranteed constitutional fundamental and the legal system has been directed by Article 39-A "to ensure that opportunities for securing justice are not denied to any citizen by reason of economic .... disabilities". The right of effective access to justice has emerged in the Third world countries as the first among the new social rights what with public interest litigation, community based actions and pro bono publico proceedings. "Effective access to justice can thus between as the most basic requirement - the most basic 'human right' - of a system which purports to guarantee legal rights." (M. Cappelletti, Rabels Z (1976) 669 at p. 672)

3. In the present case, having regard to the suit claim, the court fee was nearly Rs. 3 million, sufficiently ballooned to enable the petitioner to be regarded as an indigent person who thereby was relieved of affixing any court fee whatever. The State, and failing it someday, the court, may have to consider, from the point of view of policy and constitutionality, whether such an inflated price for access to court justice is just or legal. We make these observations because in the later stages of this litigation the Central Government itself felt the pinch and sought to circumvent the payment of

court fee as well will presently see. The suit was posted for the respondent-Corporation to file its written statement but procrastination on the part of one or other of the parties has become so pathological that neither government, nor its public sector offspring is an exception to asking for adjournments with confident insouciance. The respondent-Corporation dawdled although it had good ground to seek more time to collect distant material and process it into a meaningful defence statement. The trial Court believed by the plea for more adjournments, rejected the request at one stage and decree the suit for around Rs. 3 crores against the Corporation without so much as even the presentation of its written statement. The Central Government and the Corporation were shocked at this over-speed of the trial Judge heedless of the need for a reasonable time to plead its case. In a society of stagnation, speed in action produces surprises. The slow motion phenomenon is of course shared by all the three instrumentalities under the Constitution although law's delays in court along have been highlighted before the public. Be that as it may, when the Corporation, which flourishes on the resources of the nation and the public exchequer, was faced with a decree for a stupendous sum, it readily chose to challenge the liability but quickly found that the court fee would be a huge burden being of the order of Rs. 28 lakhs. The subject-matter, at least on paper, was so heavy that coming to the Supreme Court by either party was an inevitability. On legal advice the Corporation hit upon the intelligent strategy of avoiding heavy court fee by adopting the device of bypassing the High Court and journeying straight to the Supreme Court by seeking special leave to appeal. Two advantages accrued from this unusual step. The court fee in the Supreme Court was small and the Corporation could save the large court fee payable for getting justice from the High Court. If the Central Government or its agent discovered that the court fee was disastrously back-breaking, one should have expected it, as the promoter of inexpensive justice for the people, to undertake uniform legislation reducing the scale of court fees consistently with economic justice and civilised processual jurisprudence in other socialist and non-socialist countries. We made these observations to the learned Attorney-General who agreed that he would draw the attention of the concerned State and the Central Government to this injustice to consumers of justice.

4. When this litigation thus arrived in the Supreme Court we resorted to a benignant expedient which would save both sides time, toil and money. This litigative episode could have ordinarily lasted a quarter of a century what with the enormous inconvenience of conducting cases in a system of procedural complexity compounded by appeals upon appeals and matched by the expansiveness. This Court, therefore, took the initiative, activist fashion, to produce an early finality to the dispute by resort to the arbitral process as an effective alternative. No party has a vested right in the length of litigation and every honest suitor must readily consent to a fair procedure which will produce quick justice without devaluation of its quality. Counsel on both sides rose to the occasion and persuaded their clients to see sense and save costs. Thus, on an earlier occasion, we referred this dispute to the arbitration of Shri H. R. Khanna, retired Judge of this Court. Within months he heard the parties, considered the merits and pronounced his award on September 2, 1980. Both the parties sought and got final justice through this award within a year of arriving in this Court. Had we contended ourselves with the only point in dispute before us, viz. whether the decree for three crores of rupees without hearing the other side, should have been passed or not and had we stopped with reversing the decree and remanding the suit for fresh trial, the wheels of court justice would have trundled slowly. And by the time the case had its leisurely life in the District Court, its long lap in the High Court and its last chapter in this Court, decades would have gone by. Fortunately, the step we took yielded rich dividends, so much so the subject of dispute is now being silenced for ever.

5. The passing of a decree by this Court in terms of the award made by Shri H. R. Khanna and filed into this Court is all that remains to be done. Of course, the costs of the suit including the fee for the arbitrator also have to be decided. We see no objection whatever to give effect to the award and pass

a decree dismissing the suit. Luckily, no objections have been urged either and so we dismiss the suit and make a decree in that behalf.

6. The only other point on which a brief argument has been made relates to the costs and the half share of the arbitrator's fee which we had directed in the beginning should be paid by the respondents (plaintiffs). Shri Gupta, however, contends that he should not be subjected to costs. He is a pauper and has lost his suit. The petitioners (defendants) have saved the enormous court fee of nearly Rs. 30 lakhs by avoiding the High Court. Moreover, as a good litigant, though belatedly, he is not pressing any objection to the award. The learned Attorney-General virtually left the matter to the court as costs are discretionary. We consider that in the circumstances of the case the parties must be directed to bear their costs throughout and the petitioners (defendants) should pay full some of Rs. 25,000 top the arbitrator, relieving the respondents (plaintiffs) from any liability on this score.

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