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C.A.No. 3248-3250 OF 1998

PART-HEARD

ITEM No.101

Court No. 8

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 3248-3250 of 1998

HINDUSTAN COPPER LIMITED Appellant (s)

VERSUS

STATE OF MADHYA PRADESH & ORS.Respondent (s)

(With office report)

Date : 09/12/2003 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. Altaf Ahmad,ASG.
Ms. Sangeeta Mandal,Adv.
Mr. Kapil Chaudhary,Adv.
Ms. Jayasree Singh,Adv.
Ms. Vineeta Bharadwaj,Adv.
Ms. Swati Sinha,Adv.
for M/s. Fox Mandal & Co.,Advs.

For Respondent (s)Mr. Satish K. Agnihotri,Adv.
Mr. Anil K. Pandey,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 10.40 a.m. to 11.40 a.m.

The civil appeals are allowed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3248-3250 OF 1998

Hindustan Copper Limited . . .Appellant(s)

Versus

State of Madhya Pradesh & Ors. . .Respondent(s)

O R D E R

These appeals are directed against the order dated 8th October, 1997 passed by the Division Bench of the High Court. The appellant filed writ petitions praying therein that Section 3 and the Table Part-B Item No.4 and Explanation (b) of the Madhya Pradesh Electricity Duty (Amendment) Act, 1986 [for short, "the Act"] may be struck down. The appellant is a government company, wholly controlled by the Union of India. The Malajkhand Copper Project in Madhya Pradesh is engaged in extraction of copper ores from the captive mines of Madhya Pradesh. The mining process and other processes involve blasting of mines and then big pieces of copper ore are carried into dumpers to a unit called "primary crusher". The primary crusher is not located in the captive mines but is located at a distance of

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2.53 kilometers away from the mines. It may not be necessary for us to narrate the facts in detail in the view we propose to take. The main controversy that was required to be examined by the High Court was as to how the word "mines" is to be understood for the purpose of the Act as contained in clause (b) of the Explanation under Item No.4 of the Table contained in Section 3 of the Act. The appellant, principally, contended that the activities carried on by it do not fall within the meaning of the "adjacent" area. It also pleaded that the approach of the respondents has been selective and discriminatory. The High Court, as it appears from the impugned judgement, did not focus its attention appropriately in regard to the interpretation of the word "adjacent" occurring in clause (b) of the Explanation but proceeded on the basis of the connectivity of the process with the extraction of minerals. In doing so, it also relied upon the judgement of this Court in State of Madhya Pradesh & Ors. vs. Birla Jute Manufacturing Co. Ltd. (1995 (4) S.C.C. 603). As to the second ground that there has been discrimination, the High Court took the view that sufficient particulars and details were not placed by the appellant in order to examine the question of discrimination. In this view of the matter, the High Court dismissed the writ petitions while expressing that there is no need to examine the validity of the provisions of the Act.

The learned Additional Solicitor General, appearing for the appellant, urged that the High Court committed an error in applying the decision of this Court in Birla Jute Manufacturing Co. Ltd. (supra) when, plainly, that decision

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does not apply to the facts of this case. He was emphatic in pointing out the question of interpreting the word "adjacent" in relation to the controversy which neither arose as a fact nor was considered. He added that the High Court also was not right and justified in taking the view that the question of discrimination alleged could not be examined for want of necessary pleadings. According to him, once the appellant alleged discrimination and gave certain details, it discharged its initial burden. It was for the respondents to show that, on the facts of the case, no such discrimination was meted out to the appellant. He further submitted that because of the wrong approach, the conclusions arrived at by the High Court in the impugned judgement cannot be sustained. The High Court should have considered the effect of the word "adjacent" in construing the area, rather than solely depending on the connectivity with regard to the activity.

Per contra, the learned counsel representing the respondents made submissions supporting the impugned judgement. He fairly submitted that the decision of this Court in Birla Jute Manufacturing Co. Ltd. (supra) does not deal with the question of "adjacent" area and the decision does not directly deal with the controversy that is involved in the case on hand. When we asked the learned counsel specifically whether any counter affidavit was filed before the High Court, he submitted that it was filed and sufficient details were pleaded to show that there was no discrimination as alleged by the appellant to single it out and to insist it to pay duty at a higher rate. Since the

High Court relying upon the decision of this Court, afore-mentioned, proceeded to dispose of this case, it did not

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examine the facts in greater details in regard to either the activities carried on at different places by the appellant or as to how in the context of the facts of the case and having due regard to the provisions, the word "adjacent" should be construed.

Under the circumstances, we consider it just and appropriate that the High Court should examine afresh the contentions advanced on behalf of the parties, having due regard to the materials placed on record and in the context of the provisions of the Act touching the controversy. Since we are taking a view to remit the case to the High Court, we do not wish to express one way or the other on the merits of the respective contentions urged by the parties. In this view of the matter, we set aside the impugned judgement, remit the writ petitions to the High Court for disposal afresh in accordance with law and on merits dealing with the contentions raised by either side. Having regard to the controversy involved and that the matters are pending for quite some time, we request the High Court to dispose of the writ petitions within a period of three months from the date of receipt of the copy of this order.

The interim order passed by this Court on 20th January, 1998 shall continue to operate till the disposal of the writ petitions by the High Court.

Liberty is granted to both the parties to file additional affidavits and documents, if any, before the High Court.

The civil appeals are, accordingly, allowed in the above terms.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
December 09, 2003.