

P.R. SINHA AND ORS.

v.

INDER KRISHAN RAINA AND ORS.

DECEMBER 7, 1995

[N.P. SINGH AND FAIZAN UDDIN, JJ.]

*Constitution of India :*

*Article 226—Writ petition—Interim order—Held, High Court should not pass an interim order in the nature of a relief that can be granted only at final disposal of writ petition.*

The respondents filed a writ petition before the High Court praying for a direction to the Bharat Coking Coal Ltd. It was the case of the writ petitioners that the money deposited by them for supply of coal had been attached by the Income Tax Department. The High Court passed an interim order dated 27.8.1990 directing the Company to release the coal to the writ petitioners. The Company filed an application for modification of the order dated 27.8.1990 and a counter affidavit explaining the circumstances under which coal could not be supplied. The writ petitioners also filed a contempt petition for non-compliance of the interim order of the High Court passed on 27.8.1990. The High Court emphasised upon the Company to comply with the order dated 27.8.1990 and directed to list the contempt petition along with the writ petition. Aggrieved, the General Manager of Bharat Coking Coal Company and others filed the present appeal.

**Disposing of the appeal, this Court**

**HELD : 1** While entertaining a writ petition, the High Court should not pass interim order, the nature of which is to grant a relief that can be granted only at the final disposal of such writ petition. [299-C]

*State of J & K v. Mohd. Yaqboob Khan & Ors., [1992] 4 SCC 167, relied on.*

**2.** The High Court would first consider the application for modification filed by the writ petitioners and thereafter pass an appropriate order in accordance with law. It may also consider whether in the circumstances,

**A the proceeding for contempt should be pursued. [299-D-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11760 of 1995.

**B** From the Judgment and Order dated 4.12.90 of the Jammu & Kashmir High Court in C.M.P. No. 1495/90 in W.P. No. 478 of 1990.

Harish N. Salve, R.N. Sachthey, H. Munshi, C.D. Singh and Anip Sachthey for the Appellants.

**C** R. Sasiprabhu for the Respondents.

The following Order of the Court was delivered :

Leave granted.

**D** This appeal has been filed on behalf of Managing Director, Chief General Manager and General Manager, Bharat Coking Coal Ltd., a Government of India Undertaking, against an order dated 4th December, 1990 passed by a learned Judge of Jammu & Kashmir High Court directing the appellants to implement the order dated 27th August, 1990 passed by the said High Court.

**E** It appears that a writ petition was filed on behalf of the respondents making a grievance regarding non supply of coal inspite of the deposit having been made so far as the price of the coal was concerned. The stand of the appellants before the High Court was that the Income Tax Department had attached the money which had been deposited by the respondents for the supply of the coal.

**F** It is an admitted position that an *ex parte ad interim* order was passed on 27th August, 1990 the High Court while admitting the writ petition saying that in the meantime respondents of the said writ petition shall release the coal to the writ petitioners for which they have received the payment.

**G** We are informed that a counter affidavit was filed. A petition was also filed for modification of the aforesaid interim order bringing to the notice of the High Court the circumstances under which the coal could not be supplied to the writ petitioners. Thereafter the impugned order was

**H**

passed saying that the aforesaid order dated 27th August, 1990 must be implemented within two weeks and a direction was given to list the contempt petition alongwith writ petition on 23rd December, 1990. In the meantime this Court on 20th December, 1990 issued notice on the special leave petition and passed an order staying further proceedings before the High Court. From the records it appears that respondents have appeared but none appeared when the appeal was taken up for hearing.

This Court has pointed out repeatedly that while entertaining the writ petition the High Court should not pass interim order, the nature of which is to grant a relief which can be granted only at the final disposal of such writ petition. Reference in this connection may be made to the case of *State of J & K v. Mohd. Yaqboob Khan & Ors.* reported in [1992] 4 SCC 167.

We set aside the order dated 4th December, 1990 and request the High Court to first consider the application for modification filed on behalf of the appellants and thereafter pass any other appropriate order in accordance with law.

The appeal is allowed accordingly.

We request the High Court to also consider whether in the facts and circumstances of the case the proceedings for contempt should be pursued.

R.P.

Appeal allowed.