

**(2005) 07 CAL CK 0006**

**In the Calcutta High Court**

**Case No :** M.A.T. No. 1122 of 2005 and C.A.N. No. 5276 of 2005

American Refrigerator Co. Ltd.

APPELLANT

Vs

First Industrial Tribunal and Others

RESPONDENT

**Date of Decision :** 25-07-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 144

Industrial Disputes Act, 1947 — Section 10

West Bengal Industrial Disputes Rules, 1958 — Rule 20C

**Citation :** (2006) 1 CHN 138 : (2006) 109 FLR 400 : (2006) 2 LLJ 271

**Hon'ble Judges :** Maharaj Sinha, J; D.K. Seth, J

**Bench :** Division Bench

**Advocate :** Arunabha Ghosh and Soumya Majumdar, for the Appellant; Kalyan Bandyopadhyay, R.K. Chandra, Niloy Sengupta and Biswajit Konar, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. On earlier occasion the appeal was dismissed for default. An application for recalling the order dated 15th June, 2005 having been filed, we proposed to hear the said application along with the appeal and to pass order on the said application in case Mr. Ghosh points out that there are sufficient materials to allow the appeal. But in course of hearing, we have heard the appeal on merit. In the circumstances, the application for recalling is hereby allowed and the order dated 15th June, 2005 is hereby recalled and the appeal is disposed of as hereafter since agreed to by the parties, who had argued comprehensively, treating the appeal, by consent of parties, as on day's list for hearing.

2. The declaration of suspension of work or lock-out was the subject-matter of the dispute since referred to the learned Tribunal u/s 10 of the Industrial Disputes Act, 1947. The learned Tribunal had come to a conclusion that there was no justification to suspend the work and declare the lock-out. This was challenged by the employer in the writ jurisdiction before the learned Single

Judge. The learned Single Judge had affirmed the order of the learned Tribunal dismissing the writ petition. It is against this order the present appeal has been preferred.

3. The learned Counsel for the appellant Mr. Ghosh appearing for the employer submits that there were materials to show that the declaration of lock-out was justified on account of financial crisis and labour indiscipline due to which the employer had no access to the factory. He points out to the evidence of the workman who admitted the financial crisis of the employer. He also points out that the balance sheets furnished for the assessment year 1989-90 and from those balance sheets it appears that though at one point of time there was an upward economic situation but ultimately the company ran at loss. Mr. Ghosh next contends, on the ground of biasness, that the Tribunal had to come to Mumbai for taking evidence of the employer under order of this Court, but this had created a bias in the mind of learned Tribunal. He also contends that the learned Tribunal had omitted to consider the evidence before it with regard to the financial difficulty. He then contends that he has also confined his consideration to the Exhibit-5 and ignored the pleadings and statement of the witness pointing out to the decision of the learned Single Judge at page 97 of this application. Referring to page 183 to this application Mr. Ghosh points out that the learned Single Judge has wrongly held that no materials to establish the financial difficulties, were produced. On this ground, according to Mr. Ghosh, the order of the learned Tribunal could not be sustained. Mr. Ghosh further submits that the learned Tribunal suggested various ways and means as to how the management should function which is wholly outside the jurisdiction of the learned Tribunal.

4. Mr. Kalyari Bandyopadhyay, learned Counsel for the workmen/ respondents on the other hand contends that the notice of suspension of work did not say anything about the workers indiscipline and had relied on the financial stringency. He points out that there was some improvement in the level of the discipline among the workmen. But there was non-cooperation and that improvement of production was not upto the desired levels have not been clearly established. He also points out that only by relying upon an order of the learned Magistrate possibly in respect of an order u/s 144 of the Code of Criminal Procedure, the employer had attempted to establish the workers indiscipline, which do not find mention in the notice of suspension of work itself which can be construed to be in after thought. There was nothing to show that there was any attempt on the part of the employer to retrieve the documents from the head office through appropriate proceedings which otherwise is permissible under the West Bengal Industrial Disputes Rules, 1958 (Rule 20C). He also points out that the employer has not been able to establish the justification with regard to the declaration of suspension of work. He contends that there were materials to show that any reasonable man could arrive at one or the other conclusion and it is not a case of perversity. He relies upon a decision in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , to substantiate his contention. Relying on the evidence of the employer, at page 89A he points out that the head office of the

company was located at the factory premises which received the periodical report and returns from the factory. But there being no materials to show that the employer had no access to the head office except the order passed by the learned Executive Magistrate. It was well within the discretion of the learned Tribunal and the learned Single Judge to come to a conclusion that the employer had failed to prove the financial stringency which was referred to in the notice. Mr. Bandopadhyay further points out that these suggestions as such were reasoning to arrive at a particular finding of fact. Unless such reasoning tends to perversity the Court cannot interfere simply on this ground.

5. Our attention has been drawn to the evidence adduced by the parties as well as to the order of the learned Tribunal and that of the learned Single Judge. It appears from the notice of suspension of work, pages 17 and 18 of the application that it was only on the condition of financial crisis and operational losses that the suspension of work was declared. In the said notice it was mentioned that there was a settlement after which the work or operation was resumed and after such resumption there was some improvement in the level of discipline among the workmen, yet the production and productivity have not shown improvement to the desired level even when materials were made available. This itself suggests that the materials were made available sometimes and not all time by reason of the phrase used "even when materials were made available". That apart the improvement was there, but it was not upto the desired level when the materials were made available. Therefore, this does not clearly spell out that there was no productivity on account of conduct of the workers. Nothing has been mentioned about the workers' indiscipline or inaccessibility of the factory premises to the employer. At the same time, the learned Tribunal found that this suspension of work or lock-out was declared just before the day of payment of wages. The learned Tribunal and the learned Single Judge had also found that the materials to substantiate the financial crisis have not been produced. In fact only an oral evidence has been adduced by the employer to contend that the head office was inaccessible for the employer that the managers had left service on account of such reason. Apart from the order of the learned Executive Magistrate, nothing has been disclosed or pointed out to substantiate the alleged inaccessibility. These are questions of facts. On these materials one reasonable man can arrive at one or the other finding. The workmen had made certain reference to the absence of financial stringency/instability but without any paper. Admittedly, the workers is not supposed to be in control of papers. Therefore, it is not expected that a worker will come out with documentary evidence to establish whether there was some financial instability or not. Balance sheet were produced for earlier years but the balance sheets for the later years were not produced. No step seems to have been taken for securing access to the head office. In any event, it has not been specifically pointed out by the employer that the head office was also inaccessible to the employer. The fact that the managers were there but had left service, itself shows that the head office was accessible to the managers. No steps appears to

have been taken by the employer to secure access to the head office neither any complaint was lodged to the police authority nor anything was reported to the Government nor intimated to the workers' union with regard thereto. Therefore, on these materials it was possible for a reasonable man to come to one or the other conclusion.

6. In the circumstances, it cannot be said that there was non-consideration of materials simply on the ground that the learned Single Judge had recorded an observation:

Moreover, the learned Tribunal further pointed out that although the employer claimed that the financial condition of the establishment was very poor in spite of receipt of loans from various financial institutions, still nothing was produced before the Tribunal to satisfy him about that. Moreover, at the same time, while the employer was claiming that the workers were non-cooperating and as a result of that there was sharp fall in the production of the establishment, still the employer had to admit that there was shortfall in the production as the authority could not supply the raw materials required for such production.

7. This observation does not lead to perversity having regard to the facts and circumstances of the case, as discussed above, and the materials that was placed before us.

8. The biasness that was alleged for the reason recorded at paragraph 4 at page 95A of the judgment and order of the learned Tribunal does not seem to be sufficient to establish biasness having regard to the facts and materials available on record. That the said observation was wholly uncalled for. However, even then the materials, as disclosed, do not show that out of such biasness the learned Tribunal had held against the employer.

9. The learned Tribunal, however, recorded, at page 97A of the stay application, in the order "that Exhibit-5" was to be considered and the pleadings and the evidence by the witness were ignored as suggested by Mr. Ghosh, appears to be wholly misplaced. Inasmuch as it was a comparison of the importance of the relevant materials which the learned Tribunal intended to mean. He recorded an observation that "Exhibit-5" would play a vital role than the pleadings of the company and the statement of the witness. That does not mean that the pleadings and statement of witness are to be completely ignored. On the other hand it appears that the pleadings and statement of witness were considered by the learned Tribunal to "support the vital role of"Exhibit-5". At page 101A the learned Tribunal had considered the other aspect due to which he came to the conclusion which has since been challenged before this Court which in our view could have been reached by a reasonable person on the basis of the materials available.

10. It may also be noted that the employer had stated that the management took steps for having access to the documents of the company. Despite obtaining the Magistrate's Order and the police help, the workers did not allow the

employer to find entry into the factory premises for having access to the documents of the company. The order of the Executive Magistrate, IVth Court dated 28th December, 1992 was marked Ext. 10 on admission. It may also be noted that he has not stated that the employer had no access to the Head Office.

11. On the other hand the workmen had pointed out that the company failed to bring in raw-materials and therefore, the production could not reach the level agreed in the Memorandum of Settlement and that the workmen had no record at its disposal. The submission of Mr. Ghosh that this statement was not supported by documentary evidence is wholly misplaced since documents were supposed to be at the disposal of the employer.

12. In the decision of Syed Yakoob (*supra*) referred to by Mr. Bandyopadhyay, it was held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these cases are where orders are passed by inferior Courts or Tribunals without jurisdiction or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can, similarly, be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

13. In this case there is no question of jurisdictional error and as such this Court cannot interfere with the same. In the said decision Syed Yakoob (*supra*) it was further held that an error can very well be corrected by a writ of certiorari but not an error of fact. However, it appears to be so unless it is shown that in recording the said finding the Tribunal had erroneously refused to admit an admissible material evidence or had erroneously accepted an inadmissible evidence in arriving at the impugned finding or that the finding of fact is based on no evidence. A finding of fact being within the domain of the learned Tribunal, the Writ Court cannot interfere unless it is shown to be perverse on the principles laid down in Syed Yakoob (*supra*) and various other decisions settling the law operating in the field. The Court cannot interfere with the appreciation of evidence and the conclusion arrived at on facts unless tests of perversity are satisfied.

14. After having perusing the materials placed before us and two orders passed by the learned Tribunal and the learned Single Judge, we do not find that the conclusion arrived at on the basis of the materials could be said to be perverse.

15. In the result, the appeal fails and is accordingly dismissed.

16. There will be no order as to costs.

17. Urgent xerox certified copy, if applied for, be given to the parties on priority basis.