

(1993) 07 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 2918 of 1992

Bata India Limited

APPELLANT

Vs

The Seventh Industrial Tribunal, W.B. and Others

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 3, 33(2)(b)

Citation : 98 CWN 71

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : B.P. Ginwalla, S.N. Chaudhury, Samir Chakraborty, Subhas Kr. Deb and S.B. Singha Roy, for the Appellant; Ajit Chandra Chattopadhyay and Nayan Rakshit, Sunit Dutta with Dilip Kumar Dasgupta for State, for the Respondent

Judgement

Susanta Chatterji, J.—The present writ petition has been filed challenging the order no. 36 dated 13th March, 1992 passed by the Seventh Industrial Tribunal, West Bengal in case No. 6/89 - 33 (2)(b) of the Industrial Disputes Act and other consequential reliefs on the ground that by passing the impugned order the respondent No. 1 has travelled beyond the scope of the Enquiry as contemplated u/s 3; (2)(b) of the said Act. It is highlighted that u/s 33 (2)(b) of the Industrial disputes Act the obligations on the part of the respondent no. 1, the Seventh Industrial Tribunal before the granting of the approval thereunder to the action of the petitioner company was to be satisfied that the Certified Standing Orders of the company justified the order of dismissal. Enquiry had been" held as prescribed by the Certified Standing orders and that the other conditions as contained in Proviso to Section 33 (2) (b) of the said Act had been satisfied. It is also alleged that once the employer has complied with these requirements it is incumbent upon the respondent no. 1 to accord approval to the action taken by the employer. Looking at the impugned order it transpires that the Tribunal has ultimately held that the company"s action as per the letter dated 19.4.1989 against the opp. workman u/s 33 (2)(b) of the Industrial Disputes Act does not meet the approval. Company"s application has, accordingly, been dismissed and

the case has been disposed of. Being aggrieved the petitioner has come to the Writ Court.

2. Mr. Ginwalla, the Learned Counsel appearing for the petitioner Bata India Ltd. has drawn attention of the Court to the facts of the case that the company initiated a proceeding u/s 33 (2) (b) by filing an application on 19.4.89 and prayed for approval of its action of dismissal of its employee Shri Shyam Sundar Batabyal from service under the applicant company. It was stated that a reference case has been filed between the company and its workman. Shri Shyam Sundar Batabyal was an employee of the applicant company at its factory at Batanagar, 24 Parganas and he was concerned in the main adjudication proceedings before the Tribunal. The opposite party allegedly applied for withdrawal of Rs. 17,000/- from his Provident Fund Account under the company and pursuant to such application the amount was paid to the Opp. Party through Account Payee Cheque No. SA/8/480457 dated 15.5.85 on State Bank of India. Later on the Opp. Party claimed that he did not apply for non-refundable withdrawal from his Provident Fund Account and all signatures in the documents of withdrawal were forged and that no money was received by him. On enquiry it was found that the Opposite Party actually made an application for non-refundable withdrawal of Rs. 17,000/- from the said Account and actually received Account Payee Cheque from the company. It was alleged that the Opposite Party with an ulterior motive tried to defraud and defame the company to make untrue allegation despite receiving the said sum. In the result, the company issued a charge sheet and a disciplinary proceeding was initiated under clause 21A(a) of the Certified Standing Orders and Rules of the company for workman and that the Opp. Party submitted a reply to the charge sheet. Enquiry Officer was appointed thereafter to comply with all the principles of all natural justice by giving opportunity of defence etc. and the Enquiry Officer filed his report finding the Opposite party guilty of misconduct in terms of Clause 21A(a) of the Certified Standing Orders and decided that the Opp. Party was liable to be dismissed from service in terms of the Certified Standing Orders. The matter had been gone into by the Tribunal and it was placed that the chargesheet suggested that the Opp. Party on an enquiry tried to defraud and defame the company by making untrue allegation although the Opp. Party received the same and though he was guilty of misconduct under Clause 21A(a) of the Standing Orders. The Tribunal has tried to distinguish the evidences adduced on behalf of the Enquiry Officer and observed, inter alia, that the Enquiry officer was over zealous in establishing the ingredients of the misconduct enumerated in Clause 21A(a). The Tribunal also found that the Enquiry Officer acted perversely and there should not be any approval of the proposed dismissal as made out by the petitioner company in the application seeking leave.

3. The present writ petition is also opposed by the respondent Workman, it is argued on behalf of the Workman that the amount was encashed by one S.S. Batabyal and it should not be conclusively found that the Workman had actually, received the amount. This is a question of fact. If the Tribunal finds that actually

the amount was taken by the Workman he will have to explain under what circumstances he had refused the receipt of payment thereof. The Writ Court is essentially not a Court of Appeal. It has to consider the decision making process as found by the Hon"ble Supreme Court in a decision reported in AIR 1986 SC 997. In fact the Workman was chargesheeted and an enquiry had taken place by giving an opportunity of defence. A report has been filed and the Disciplinary Officer proposed to take action and asked for the approval u/s 33 (2)(b) of the Industrial Disputes Act. Upon perusal of the materials on record this Court is of the view that the Tribunal has to approach the matter impartially, independently and impassionately. The findings and the reasons of the Tribunal in refusing the approval do not appear to be fair and justified inasmuch as there is no proper appreciation of the enquiry report. Instead the Tribunal has considered the merit of the evidences adduced on behalf of the company before the Enquiry Officer. This is certainly beyond the scope of Section 33 (2)(b) of the Industrial Disputes Act. The Tribunal sat for a limited purpose as to whether proper procedure was followed and whether there was any misconduct within the ambit of clause 21A(a) of the Certified Standing Orders. Anything beyond the same will be unwarranted and uncalled for. The Tribunal, as this Court finds, has gone beyond the scope of Section 33 (2)(b) in assessing the merit of the evidences in the manner as done in the instant case. This judgment suffers from certain inherent defects and the same cannot be sustained in law. The Tribunal has to consider in the proper perspective and to see whether there can be approval strictly within the spirit of Section 33 (2)(b) of the Industiral Disputes Act. For the fitness of things, this Court is of the view that the Tribunal should consider afresh the application of the company whether an approval should be granted by giving an opportunity to both sides and pass a fresh reasoned order in the manner as desired u/s 33 (2)(b) of the Act. The matter is sent back on remand before the Tribunal, and the impugned order is quashed accordingly. It is expected that the Tribunal will dispose the matter within a period of 4 months from the date of communication of the order.

All parties to act on assigned copy of the operative part of the judgment on the usual undertaking.