
(2007) 04 CAL CK 0034

In the Calcutta High Court

Case No : M.A.I. No. 1569 to 2007 and C.A.N. No. 3195 of 2007

Bharat Petroleum Corporation Ltd. and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 22, 23, 24, 26

Citation : (2007) 113 FLR 1138

Hon'ble Judges : P.K. Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : P.K. Mallick, A.C. Chakraborty, U.P. Mukherjee, Amit Chakraborty, Indrani Chakraborty and R.I. Sardar, for the Appellant;Asish Das, Paramita Mukherjee for Respondent Nos. 3, 11 to 14 and Nandini Mitra and Sanjay Saha for Respondent Nos. 2, 4 to 10 and Abha Roy and Atarup Banerjee for State, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Chattopadhyay and Arunabha Basu, JJ.—The appeal should not be treated as defective since leave has already been granted to present the Memorandum of Appeal without the certified copy. However, Advocate-on-record of the appellants is directed to file the certified copy of the judgment and order under appeal within two weeks from date.

Re: C.A.N. 3195 of 2007

2. This application for stay has been filed in connection with the appeal which has been preferred from the judgment and order dated 12th April, 2007 passed by the learned Single Judge in connection with the Writ Petition being W.P. 7076 (W) of 2007.

3. The appellants-writ petitioners herein filed the writ petition before this Hon'ble Court challenging the strike notice dated 30th March, 2007 on the ground that the same is violative of the provisions of Sections 22,23 and 24 of the Industrial

Disputes Act, 1947.

Mr. Mallick, learned senior Counsel representing the appellants, submits that the respondent Unions have called the Strike in violation of the provisions of Sections 22, 23 and 24 of the Industrial Disputes Act, 1947 and this Court, therefore, should pass an appropriate order restraining the respondents, particularly, the executives and the members of the respondent Unions from participating in the proposed strike which, according to the appellants is illegal and has been called in contravention of Sections 22 and 23 of the Industrial Disputes Act, 1947.

4. There is no dispute that if a strike is called in contravention of the provisions of Sections 22 and 23 of the Industrial Disputes Act, 1947 then appropriate action can be taken against the offenders u/s 26 of the Industrial Disputes Act. This Court, however, at this stage cannot arrive at a final conclusion that the proposed strike has been called by the respondent Unions in contravention of the provisions of Sections 22 and 23 of the Industrial Disputes Act, 1947.

5. The learned Counsel representing the respondent Unions specifically urged before this Court that the proposed strike has not been called in violation of Sections 22, 23 and 24 of the Industrial Disputes Act.

Mr. Mallick, learned senior Counsel representing the appellants, strongly denied the aforesaid contentions made on behalf of the respondent Unions and submitted that the aforesaid strike had been called in clear violation of the provisions of Sections 22 and 23 of the Industrial Disputes Act.

6. The issue as to whether the proposed strike on 18th April, 2007 would violate the provisions of Sections 22 and 23 of the Industrial Disputes Act cannot be decided at this stage in this proceeding and in our opinion the said issue can be effectively decided in an appropriate proceeding under the Industrial Disputes Act, 1947. In any event, the learned Single Judge in our opinion has rightly refused to grant interim relief in the present writ petition on the ground that the same would virtually grant final relief to the writ petitioners.

7. Mr. Mallick, the learned senior Counsel of the appellants cited a decision of the Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and submits that a Writ of Mandamus cannot be retailed to the appellants/writ petitioners in the facts of the present case.

8. In our considered opinion, the aforesaid decision has no manner of application in the facts and circumstances of the present case.

Mr. Mallick also cited another decision of the Supreme Court in the case of *T.K. Rangarajan v. Government of Tamil Nadu and Ors.* 2000 (98) FLR 1009 (SC). In the aforesaid decision the Hon'ble Supreme Court has held that the employees have no fundamental right to resort to strike.

The aforesaid proposition of law is well-settled and the employees herein also did

not claim enforcement of any fundamental right to resort to strike. The aforesaid decision, therefore, cannot be of any help to the appellants herein.

Mr. Mallik cited another decision of the Division Bench of the Bombay High Court in the case of Bharat Petroleum Corporation Ltd. and Anr. v. Bharat Petroleum Employees' Union and Ors. 2001 (90) FLR 302 (Bom.) wherein the Division Bench of the Bombay High Court had specifically held that a writ petition was maintainable against any one who was under a public duty and passed an order restraining the office bearers and member workmen of the respondent Union from resorting to the strike which had been called in contravention of the provisions of Sections 22 and 23 of the Industrial Disputes Act.

9. In the present case it has not yet been decided that the proposed strike has been called in contravention of Sections 22 and 23 of the Industrial Disputes Act. Therefore, the aforesaid decision of the Bombay High Court is not at all applicable herein.

10. There can be no dispute that strike is one of the most effective and recognized weapons in the hands of the employees/workmen and the writ Court cannot, by issuing a writ of mandamus prevent or restrict use of the said weapon until and unless it is established beyond all reasonable doubt that the strike has been called in clear violation of the provisions of Sections 22 and 23 of the Industrial Disputes Act. In the present case, the learned Counsel of the respondent Unions strongly denied that the aforesaid strike had been called by the respondent Unions in violation of any provision of the Industrial Disputes Act even though Mr. Mallik, the learned Counsel of the appellants, has contended otherwise. In any event, it has not yet been established before any appropriate forum that the proposed strike called by the respondent Union is in violation of the provisions of Sections 22 and 23 of the Industrial Disputes Act.

11. In the aforesaid circumstances, we are of the opinion that there is no scope of granting any interim relief to the appellants/writ petitioners, not unless it is finally decided that the respondent Unions by the proposed strike "notice have virtually violated the provisions of Sections 22 and 23 of the Industrial Disputes Act. Furthermore, the appellants/writ petitioners are also not remediless, even if anyone offends the provisions of Sections 22, 23 and 24 of the Industrial Disputes Act, in view of the clear provision of Section 26 of the Industrial Disputes Act.

12. Having heard the learned Counsel appearing for the parties and considering the facts and circumstances of this case and on examination of the impugned order under appeal, we are of the opinion that the learned. Single Judge has rightly refused to grant any interim order in the matter on the ground that the same would virtually grant final relief to the writ petitioners. We approve the aforesaid decision of the learned Single Judge and refuse to interfere with the order under appeal.

13. For the reasons mentioned hereinbefore, this application for stay is

dismissed, the same being devoid of any merit.

In view of the aforesaid order, we are also of the opinion that no other issue is required to be decided in the pending appeal and the same is therefore, treated as on day's list and disposed of accordingly.

There will, however, be no order as to costs.

Let it also be on record that we have not decided any issue raised in the writ petition on merits and the same will be decided by the regular Bench in due course.

Let Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates of the parties on usual undertaking.