
(2010) 03 CAL CK 0026

In the Calcutta High Court

Case No : M.A.T. No. 38 of 2010 and C.A.N. No. 1734 of 2010

Calcutta Port Trust

APPELLANT

Vs

Shaikh Jahangir Ali and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 125 FLR 798 : (2010) 4 LLJ 472 : (2011) 1 SLR 144

Hon'ble Judges : Mohit S. Shah, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Arunava Ghosh and Saugata Bhattacharyya, for the Appellant;
Bikash Ranjan Bhattacharya, Shanti Das, Sanjukta Roy, A.K. Roy, K. Roy and
Arun Kumar Roy, for the Respondent

Judgement

Mohit S. Shah, C.J. and Pinaki Chandra Ghose, J.—Instead of taking up the stay application, we have taken up the appeal itself for final disposal with the consent of the learned Counsel for the parties by treating the same as on day's list.

2. The appeal is directed against the judgment dated November 23, 2009 of the Learned single Judge in a writ petition which was filed by 23 persons, private Respondents herein, challenging the decision dated September 19, 2001 of the Central Government, not to prohibit employment of contract labour in the jobs/works of repair of conveyor belts i.e. vulcanising in the establishment of Calcutta Port Trust, Haldia Dock Complex for which the "appropriate government" under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the said Act) is the Central Government.

3. Learned single Judge disposed of the petition in the following terms:

For these reasons, I dispose of the writ petition by saying that the Respondents, especially the port trust and its administrative ministry of the Central Government, shall explore the possibilities of introducing the direct payment system or compelling the incoming contractor, if one substitutes the existing one, to engage the same set of labourers excluding the unwilling ones, so that the

Petitioners, giving themselves over to the Port Trust's services during the last twenty-four years, are not shown the door unceremoniously. I have no doubt that if the Respondents concerned can give some benefits to the Petitioners, then they will be promoting the constitutional philosophy and setting an example for others. There shall be no order for costs.

4. Learned Counsel for the Appellants Calcutta Port Trust submits that if the observations made by the Learned single Judge are treated as directions, the same run counter to the legal provisions and also contrary to the law laid down by the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., and particularly the observations made in Paragraphs 89 and 103 to 107 thereof.

5. On the other hand, Learned Counsel for the Respondents submits that the appeal is not maintainable as the observations made by the Learned single Judge cannot be construed as a judgment and that the appeal under Clause 15 of the Letters Patent would lie only against the judgment.

6. Having heard the Learned Counsel for the parties we are of the view that the observations/directions given by the Learned single Judge while disposing of the writ petition need to be read in the light of the reasons given by the Learned single Judge and it appears that the Learned single Judge has referred to the constitutional provisions. Moreover, the Learned single Judge has directed the Port Trust and the Administrative Ministry of the Central Government to explore the possibilities of introducing the direct payment system or compelling the incoming contractor, if one substitutes the existing one, to engage the same set of labourers excluding the unwilling ones, so that the services of the writ Petitioners having rendered 24 years' service cannot come to an end. The Learned single Judge further observed that if the authorities can give some benefits to the writ Petitioners, then they will be promoting the constitutional philosophy and setting an example for the others.

7. Learned Counsel for the Appellants submits that though couched in the language of hope and expectation, the Appellants may be hauled up for contempt if the expectations expressed by the Learned single Judge, are not fulfilled by the Appellants.

8. We may also note at this stage the submission which was made by Mr.

Bhattacharya for the writ Petitioner before the Learned single Judge that there was no scope for him to make a submission for employment of contract labour in the establishment in question should be prohibited, or that the port trust should be ordered to absorb the Petitioners in its establishment.

9. Having heard the Learned Counsel for the parties, we are of the view that the observations made by the Learned single Judge cannot be treated as a direction to the Appellants to introduce the direct payment system or to compel the incoming contractor to engage the same set of labourers.

10. The Learned single Judge appears to be conscious of the limitations on the power of judicial review of administrative action and, therefore, the Learned single Judge has stopped short of giving any direction to the Appellants.

11. The appeal is accordingly disposed of in terms of the above clarification that the observations made by the Learned single Judge, are not in the nature of directions, but merely an expression of hope.

12. On the above observations, the appeal is thus disposed of.

13. Since the appeal is disposed of, the connected application for stay has become infructuous and the same is also disposed of.

14. Photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the Learned Counsel for the parties on the usual undertakings.