

(1994) 03 CAL CK 0028
In the Calcutta High Court
Case No : C.O. No. 3930 (W) of 1992

Durgapur Projects Limited and Others APPELLANT
Vs
State of West Bengal and Others RESPONDENT

Date of Decision : 11-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24(2)
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 15(2), 33(B)

Citation : (1994) 1 CALLT 462

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Arunava Sengupta and P.B. Chowdhury, for the Appellant; Madhusudhan Dutta, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ petition has been filed praying inter alia :-

(a) Issue a writ or in the nature of Certiorari to the Respondents requiring them to transmit and certify to this Hon"ble Court the records of the proceedings had before them for the purpose of scrutiny and examination by this Hon"ble Court so that the impugned order dt. 31.1.92 (Annexure F) is quashed.

(b) Issue a writ of in the nature of Mandamus do issue commanding the respondents and each one of them by themselves or by their agents and/or subordinates from giving any effect to and/or proceeding on the basis of the impugned order dated 31.1.92 (Annexure F to this petition) ;

(c) A writ of or in the nature of Prohibition do issue prohibiting the respondent No: 3 from proceeding on the basis of the order of reference bearing No. 1878-IR dated 12.8.91 (Annexure "A" to this petition) ;

(d) A Rule NISI in terms of the above prayers and no cause or insufficient cause being shown the same may be made absolute ;

(e) An injunction do issue restraining the respondents and each one of them by themselves or by their agents and/or giving effect to the impugned order dated 31.1.91 (Annexure "F" to this petition) and further restraining the Respondents from proceeding with the hearing of the dispute referred for adjudication on the basis of the order of Reference No. 1878-IR dated 12.8.91 (Annexure-A to this petition) ;

(f) An ad interim order do issue in terms of prayer (e) above ;

(g) Such further order or orders be passed and direction or directions be given as to this Hon"ble Court may seem fit and proper.

It is stated in details that the petitioner No. 1 is a Company and a Government of West Bengal undertaking, the petitioner No. 2 is the personal officer and the petitioner No. 3 is the Chief Personal Officer of the said company. It is further stated that the respondent No. 2 joined the organization on 5.6.72 as a helper in the Coke Oven Maintenance Department. On 13.12.77 at about 5 P.M. the respondent No. 2 left the place of work without permission. Immediately thereafter he was caught by the Security Guard on duty at the time Office Gate while unauthorisedly taking out 7 Nos. of R.R.C. Block Fuse. He was found carrying the said materials in two ration bags. Said respondent No. 2 was served with a Charge sheet-cum-suspension order on the ground of theft of company's property and leaving the place of work during working hours without permission. The reply was filed on 2.1.78. The reply was found unsatisfactory and the management instituted a domestic enquiry. The enquiry officer filed his report finding the respondent No. 2 guilty of misconduct. The management after considering the report of the enquiry officer dismissed the respondent No. 2 from service with effect from 10.4.78. After a lapse of decade the petitioners received a letter from the Assistant Labour Commissioner inviting comments from the petitioners on the subject-matter of alleged wrongful termination of the respondent No. 2. The conciliation proceeding was fruitless. A reference was made to the 9th Industrial Tribunal, Durgapur upon the issue as to whether the termination of service of the respondent No. 2 Tushar Kanti Ghosh was justified ?, and what relief, if any, is he entitled to ?

2. The respondent No. 2 filed an application u/s 15(2)(b) of the Industrial Disputes Act praying for granting interim relief. The respondent No. 1 by an order dated 14.1.92 withdrew and transferred the entire proceedings from the Ninth Industrial Tribunal, West Bengal to the Seventh Industrial Tribunal, West Bengal. The said withdrawal and transfer was done in exercise of the power as conferred u/s 33(B) of the Industrial Disputes Act, 1947. Even after the withdrawal of the dispute and transfer the case to Seventh Industrial Tribunal, the respondent No. 3 the Ninth Industrial Tribunal proceeded with the hearing of the interim relief and passed the order on 31.1.92.

3. Being aggrieved the writ petitioners have come to this court on the grounds that the respondents erred in law to pass the impugned order dated 31.1.92,

even after the respondent No. 1 had transferred the dispute from Ninth Industrial Tribunal to Seventh Industrial Tribunal by order dated 14.1.92 for lack of jurisdiction the petitioners have challenged the order. Attention of the court has been drawn to a judgment reported in Bhimsen Saxena Vs. Brijnandan Bajpai, . It has been found in view of Section 33B(1) of Industrial Disputes Act and Section 24(2) of Civil Procedure Code, the Industrial Dispute Act has to proceed either de novo or from the stage at which it was so transferred. It was held that the position u/s 33B of the Industrial Disputes Act, 1947, is the same as that u/s 24(2) of the CPC which provides that where any suit or proceeding has been transferred or withdrawn under sub-section (1) of Section 24,

"The court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from; the point at which it was transferred or withdrawn".

It has been interpreted that the words "either retry it or proceed from the point at which it was transferred or withdrawn" in Section 24(2) of the CPC and the words "proceed either de novo or from the stage at which it was so transferred" in Section 33B(1) of the Industrial Disputes Act, 1947, produced the identical result.

4. In the instant case, it is found that before the order of transfer as made on 14.1.92, the application for interim relief was heard but the impugned order has been made on 31.1.92, after the order of transfer.

5. Considering all the facts and circumstances of the case this court finds that the Ninth Industrial Tribunal while disposing the application made u/s 15(2)(b) of the Industrial Disputes Act passed the order on 31.1.92, when admittedly the tribunal had no jurisdiction to pass the same. On 31.1.92 the Ninth Industrial Tribunal was functus-office and nevertheless the application was heard prior to 14.1.92, it is without jurisdiction to pass any order after the withdrawal of the case from Ninth Tribunal to Seventh Tribunal. Considering the matter further in depth this court finds merit in the submissions made on behalf of the petitioners. There is lack of jurisdiction of the tribunal to pass the interim order and there is violation of a statutory provision and the impugned order cannot be sustained as such.

6. For the foregoing reasons, the writ petition is allowed. The impugned order of the tribunal is set aside. It is, however, made clear that this judgment will not prevent the transferee court namely the Seventh Industrial Tribunal to hear again the application u/s 15(2)(b) of Industrial Disputes Act again on merit after hearing both sides in accordance with law. There has been no order as to costs.