

(2005) 08 CAL CK 0052

In the Calcutta High Court

Case No : C.W.J.A.S.W.P. No. 12198 (W) of 2005

Gillanders Arbuthnot and Co. Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Citation : (2006) 1 CHN 642 : (2005) 107 FLR 1161 : (2006) 1 LLJ 663

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Partha Bhanja Chowdhury, Ananta Kumar Shaw, S.K. Singh and Sourajit Das, for the Appellant; A. Mukherjee and B. Patra, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J.—In the writ petition the Petitioner has prayed for several reliefs. The principal grievance of the Petitioner is that Deputy Secretary, Labour Department, Government of West Bengal by his order dated August 29, 2003 has transferred the dispute from the 5th Industrial Tribunal to the 8th Industrial Tribunal, in violation of the principles of natural justice since it was passed without giving an opportunity of hearing to the Petitioners and ignoring the fact that the 5th Industrial Tribunal is functioning. Reference is made to the order dated August 28, 2003 passed by the 5th Industrial Tribunal in another dispute to demonstrate the fact that the order was passed in complete non-application of mind. Thus, it is submitted that order and the consequential order should be quashed.

2. Reliance has been placed on the judgment of the Apex Court in Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, .

3. Learned advocate appearing on behalf of the Respondent No. 4 does not dispute the: proposition of law as laid down by the Supreme Court. It is submitted that the Secretary of the Labour Department, Government of West Bengal may be directed to pass necessary orders after hearing the petitioners.

4. Heard learned advocates for the parties.

5. It is not in dispute that by order dated August 29, 2003, the dispute was transferred from the 5th Industrial Tribunal to the 8th Industrial Tribunal on the ground that the Court was lying vacant at that point of time. From the order impugned, it does not appear that hearing was given to the petitioner. Thus, the said order was passed in violation of the principles of natural justice. Hence, it cannot stand. The Supreme Court in *M.S. Nally Bharat Engineering Co. Ltd. (supra)* while considering a matter relating to transfer of a dispute from the Labour Court in Dhanbad to the Labour Court in Patna held as under Management of *M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, :

23. In the present case, the State has withdrawn the pending reference from the Labour Court, Dhanbad and transferred it to another Labour Court at the distant District of Patna, on the representation of the workman, without getting it verified from the management. The State in fairness ought to have got it verified by giving an opportunity to the management which is a party to the pending reference. Denial of that opportunity is a fatal flaw to the decision of the Government.

24. The management need not establish particular prejudice for want of such opportunity. In *S.L. Kapoor v. Jagmohan CHINNAPPA REDDY, J.* after referring to the observation of *DON ALDSON, J., mAltcoLtd. v. Sutherland* said that the concept that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. It was emphasized that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observation of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.

6. The principles of law laid down by the Apex Court, apply to the facts of the case at hand, since no hearing was granted while transferring the matter. Moreover, since it appears from a copy of the order sheet annexed to the writ petition that the 5th Industrial Tribunal was functioning on the relevant date, in my view, the order impugned was passed in total non-application of mind. Thus, the order dated August 29, 2003 is set aside and quashed.

7. Therefore, I direct the 5th Industrial Tribunal to proceed with the matter.

8. The writ petition is allowed.

9. Let affidavit of service filed in Court today be kept with the records,

10. No order as to costs.

11. Urgent xerox certified copy of this order be given to the appearing parties, if applied for, on priority basis.