
(1987) 06 CAL CK 0006
In the Calcutta High Court

Guest Keen Williams Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-06-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (1987) CALLT 469

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Jatin Das and S.N. Datta, for the Appellant; K.H. Dasan, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterjee, J.—The present writ application at the instance of Guest Keen Williams Ltd., (Sankey Pressing Division) is directed against the Order No. 13, dated 16.8.1986 passed by the 3rd Industrial Tribunal. By the impugned Order, the Tribunal has found that the enquiry held by the Management was neither fair nor proper and called upon the management to prove its case before the Tribunal by examining its witnesses.

2. It has been alleged that the Tribunal cannot disregard the pleadings of the parties and sit an appeal over the finding of the domestic enquiry. The Tribunal can interfere with the finding of domestic enquiry only if the enquiry is vitiated for non-compliance of the principles of natural justice or it is perverse and not on the basis of appreciation of evidences. The finding of the tribunal is that the enquiry was vitiated as the Company was represented by an officer who was a law graduate whereas no opportunity was given to the workmen to be represented by a person having legal qualification and that there were two charge-sheets and the first one was a mere show cause notice and the reply thereto not being satisfactory a chargesheet was issued and that the copies of the report of the security officer and the seizure list prepared by him were not

made over to the delinquent workman in proper time. All these findings of the Tribunal have been challenged and according to the petitioner the said order dated 16. 6. 1986 is otherwise bad in law and the same is liable to be set aside.

3. Mr. Ghosh, the learned counsel, appearing for the petitioner Company has urged that the finding of the Tribunal is prima facie bad and is an irregular exercise of jurisdiction. Such a question of jurisdiction goes to the root of the case and the findings are devoid of merit and the conclusion is perverse.

4. Mr. Ghosh, in support of his contention has referred to the decision of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, . The ratio of the decision is that the High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to set its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be and is, indeed, not disputed but it would not be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do. Normally the questions of fact, though they may be jurisdictional facts, the decision of which depends upon the appreciation of evidence should be left to be tried by the Special Tribunals constituted for that purpose if and after the Special Tribunal try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take the matter before the High Court by a writ petition and ask for appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before the High Court in its writ jurisdiction.

5. The next case which has been referred as reported in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . The said decision has referred to the case reported in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . The latter decision quoted the law as laid down by the Supreme Court as of December 15, 1971 by referring the following extract from the earlier decision as set down hereinbelow :--

(a) "Even if no enquiry has been held by employee or if the enquiry held by him is found defective, the Tribunal, in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action.

(b) The Tribunal gets jurisdiction to consider the evidence placed before it, for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by the employer is found to be defective.

(c) it has never been recognised that the Tribunal should straightway without anything more direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held, or the said enquiry is found to be defective.

(d) An employer who wants to avail himself of the opportunity of adducing evidence, for the first time, before the Tribunal to justify his action, should ask for which at the appropriate step. If such an opportunity asked for, the Tribunal has no power to refuse the giving of an opportunity to an employer to adduce evidence, for the first time, before the Tribunal is in the interest of both the Management and the employee and to enable Tribunal itself to be satisfied about the alleged misconduct.

6. The said decision has, however, clearly indicated that when a case of dismissal of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty but when the matter is in controversy between the parties that a question must be decided as a preliminary issue. That decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chosen not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. It was made clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will also be legitimate for the High Court to refuse to intervene at this stage. These observations were made with anxiety that there may not be any undue delay in industrial adjudication.

7. Mr. Ghosh has also submitted by referring to Halsbury's Laws of England, 4th Edition at page 140 that where the defect of jurisdiction is apparent on the face of the proceedings and the application is made by a party, the order goes as of right and is not the matter of discretion. Smallness of the matter in dispute and the delay on the part of the applicant are not in themselves grounds of refusal.

8. The attention of the Court has been drawn to the powers of Tribunal as to deal with the preliminary issue as mentioned above. The case of *Indian Iron and Steel Co. Ltd v. Their workmen* as reported in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, It has been found in the said case that undoubtedly, the Management of a concern has power to direct its own internal administration and discipline but the power is not but limited and when a dispute arises, Industrial Tribunal has been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal of misconduct the Tribunal does not, however act as a Court of an appeal and substitute its own judgment for that of the management. It will interfere (I) when there is want of good faith (II) when there is victimisation or interference of a labour contract, (III) when the Management has been guilty of a basic error or violation of principle of natural justice (IV) when on the materials, the finding is completely baseless and purposeless. Referring to those principles, Mr. Ghosh has tried to canvass that the scope of the Tribunal to

discard the finding of the enquiry by an employer is confined to such factors and nothing beyond. If it, had gone beyond such yardsticks, there is lack of jurisdiction and the High Court should interfere in the appropriate case.

9. Another decision reported in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, has been cited.

10. By referring to the said decision, it, is argued on behalf of the petitioner company that when the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position under such circumstances, will be that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. But it has been clearly held in the said decision that it is no doubt true that the Management has got the right to adduce evidence before the Tribunal in case the domestic enquiry is held to be vitiated. The Tribunal derives jurisdiction to deal with the merits of the dispute only if it has held that the domestic enquiry has not been held properly but the two steps in which the Tribunal has to conduct the enquiry are in the same proceeding which relates to the consideration of the dispute regarding the validity of the action taken by the management. Therefore, if the management wants to avail itself the right of adducing additional evidence, it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management. An enquiry into the preliminary issue is in the course of the proceedings and the opportunity given to the management, after a decision on the preliminary issue, is really a continuation of the same proceeding before the Tribunal.

11. As regards the High Court's power to review the finding of the evidence on record. Mr. Ghosh has referred the decision reported in 1975 LabIC 94 (*Ramendra Naryan Dev v. 8th Industrial Tribunal, West Bengal, and Ors*). The Division Bench presided over by Salil Kr. Dutta J. held that it is well settled that where the jurisdiction of a Tribunal depends upon the preliminary finding of fact, the High Court, in a writ proceeding, is entitled to determine upon its independent judgment, the correctness or otherwise of the finding. Upon such principles as initiated in the reported decisions as referred to above, an argument has been made on behalf of the petitioner that in the instant case, the Tribunal has rejected the finding of the domestic enquiry without appreciating the evidences as per guidelines and without holding that there is any violation of the principle of natural justice and/or the finding of the domestic enquiry is perverse. This writ Court should interfere with the finding of the preliminary issue as decided by the Tribunal and the writ petition is maintainable and the writ Court should examine the merit of the case afresh by weighing the evidences and restore the finding of the domestic enquiry and quash and/or set aside the direction of the Tribunal to the management to adduce fresh evidences.

12. Mr. Salil Kumar Ganguly, the Learned Advocate, appearing for the Respondent No. 3, Sankey Electrical Stamping Employees' Union and the Respondent No. 4, Shri Rabindranath Ghosh argued that the finding of the preliminary issue as made by the Tribunal, is not open to the writ Court and the writ petition itself is not maintainable. He has since referred to the decision reported in Blue Star Limited Vs. N.R. Sharma and Others, . In the said decision, however, it has been discussed that the factual aspect of the finding of the Lab. Court is based on sound evidence and good reasons. Even if it is of jurisdiction, it is correct and not capable of being challenged in a writ petition. The legal aspect of the finding is also correct, in the light of the decision made in the said case. The said reported decision does not, however, throw any light so far as the dispute is concerned in the instant case.

13. Mr. Ganguli has however, laid much emphasis upon the decision of the Supreme Court in the case of (D.P. Mahewari v. Delhi Administration) as reported in 1983(2) LLT 425. In D.P. Maheswari's case, the Supreme Court has discussed the entire trend as to the approach of the superior Court, so far as the preliminary points are concerned. It has been observed that there was a time when all the niceties of preliminary points were entertained. The time has undergone a change. The interference of the High Court, and the Supreme Court as to finding of the Preliminary Point has seriously been discouraged.

14. Mr. Ganguli has also referred to an unreported decision of the Division Bench of the High Court at Calcutta. In the case of Shri Annapurna Cotton Mills v. 5th Industrial Tribunal, presided over by Anil Kumar Sen J. (as he then was) it was found that even though the preliminary issue had been decided against the appellant, the final Award may as well go in its favour so that it, may not be necessary for the appellant to challenge the decision of the preliminary issue with the observation that the Supreme Court has laid it down that the High Court should be very circumspect in the matter or interference with any preliminary order before the adjudication. Another unreported decision made in the case of Sadananda Mistry v. 7th Industrial Tribunal, West Bengal and Ors. It has been decided by Mrs. Padma Khastgir J. that the High Court should not interfere with the finding of the Tribunal when the aggrieved party can challenge the Award after it is finally passed. In view of the observations made in the said decision, it has been argued on behalf of the Respondent Nos. 3 and 4 that the writ petition is not maintainable and this Court should not give any indulgence to the management against the decision of the Tribunal. Besides, the final judgment is neither perverse nor it is in violation of the principle of natural justice.

15. Having heard the learned Counsels of both sides and in view of the principle of law as discussed above it appears that in order to avoid any delay in disposal of the Industrial Disputes and for expeditious disposal of such disputes, the Supreme Court has found that the High Court under Article 226 of the Constitution of India and/or the Supreme Court under Article 32 of the Constitution of India should be slow in interfering with the finding of the

preliminary points even it raises any question of jurisdiction. Although there is no total ban that the High-Court cannot entertain any application or cannot interfere with any finding of the Tribunal so far as the preliminary issue is concerned is not there. In an appropriate case, where the question of jurisdiction is as such that the Tribunal cannot go into the dispute at all, and yet it has entertained the dispute, the High Court or the Supreme Court in an appropriate case can certainly interfere so that unnecessary delay can be avoided by such interference itself. Apart from D.P. Maheswari's case reported in 1983(II) LLJ (Supra), the case has been considered in S.K. Verma Vs. Mahesh Chandra and Another, . There must be pragmatic approach and there should not any pedantic approach. This point has further been stressed in Hindustan Rubber case as reported in Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, . The relevant portion of the page 394 runs as follows :

16. It has also been stressed in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, of the said case, (Central Inland Water v. Its Workmen) that "..... .."

17. From all these principles, it is clear that there should not be any manifest injustice and unless the same is brought to the surface, the question of interference does not arise.

18. Regard being had to the materials on record. This Court does not find that in rejecting the finding of the domestic enquiry and by asking the management to adduce fresh evidence there is any manifest injustice, particularly, in view of the fact that even after final Award, the management can challenge all the issues including the finding of the Tribunal to entertain the fresh evidence by rejecting the finding of the Enquiry Committee in its proper perspective.

19. For the foregoing reasons, I find that the argument on behalf of the Management does not appear to be sound. Hence the writ petition is rejected without any order as to the costs.

20. The Tribunal is, however, directed to expedite the hearing of the entire case as early as possible, preferably within six months from the date of the communication of the order.

21. I make it clear that I have not decided anything as to the merit of the contentions of the parties and all the questions including those raised in the present writ petition are left open to the management after disposal of the case by the Tribunal by passing the final award.