

(2004) 08 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4380 of 2001

Jaipur Udyog Ltd. and Another

APPELLANT

Vs

Appellate Authority for Industrial and Financial
Reconstruction and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 RLW 131 : (2004) 4 WLC 448

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Rajeev Nayyar, Gopal Jain, Arunabh Chaudhary and Sunil Nath, for the Appellant; B.P. Agrawal S.K. Tewari, Bharat Byas, Kamlakar Sharma, R.K. Agrawal, S.N. Kumawat, Neeraj Bhatt, S.C. Mittal, Inderjeet Singh, Parinitoo Jain, Arjun Singh, K. Verma for S. Kasliwal, Rakesh Kumar, Amir Aziz, Saransh Saini and R.A. Katta, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The application seeking impleadment stand disposed of with the direction that Dhanraj Kumar Jain and M/S. Haryana State Minor Irrigation and T/Wells Corporation Ltd. are permitted to make submissions as interveners.

2. Having analysed the rival submissions I find that controversy involved in this writ petition which has been preferred against the interim order dated August 3, 2001 passed in Appeal No. 22/2001 by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (for short "AAIFR"), attracts the maxim "qui aliquid statuerit parte inaudita altera acquum licet dixerit haud acquum fecerit" (He who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right).

3. It is borne out from the record that the impugned order dated August 3, 2001 was stayed by this court on September 4, 2001 and when appeal No. 22/2001

was posted for hearing before the AAIFR, the counsel for the petitioners brought this fact to the knowledge of AAIFR and prayed to adjourn the hearing of appeal. The AAIFR did not grant adjournment, closed the arguments and dismissed the appeal with the following observations:-

"7. We have given opportunity to both Miss Ruby Ahuja and Shri Gopal Jain for arguing the appeal. However, they are only praying for adjournment of the hearing. That prayer has already been rejected Shri Gopal Jain states that he is not addressing the arguments because the appellant has approached the Hon"ble High Court at Jaipur.

8. As they are not inclined to argue on merits we have treated the arguments as closed. Shri Gopal Jain states that they are not addressing the arguments on merits because according to them, the Hon"ble High Court has stayed the proceedings in this appeal. Mr. Gopal Jain and Miss. Ruby Ahuja have over twenty minutes repeated the same contention that the Hon"ble High Court had granted prayer (b) and, therefore, they do not want to argue the appeal on merit. We do not accept this plea for adjournment because there is no such specific direction in the copy of the Hon"ble High Court's order that has been placed before us. We are disposing the appeal on merits, after giving opportunity to the learned counsel for the appellants, and on the basis of pleadings and record before us."

4. Crucial question springing for consideration is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused?

5. Audi alteram Partem rule says that no one should be condemned unheard. In the famous case of Cooper v. Wardsworth Board of Words (1863(143 ER 414), this rule was approved and following observations were made:-

" [Even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God),"where art thou? hart thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?"

It is well settled that the administration of justice is to be freed from the narrow and restricted consideration which are usually associated with a formulated law laid down involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority which making an order affecting those rights. The rules of natural justice are intended to prevent the authority from doing injustice.

6. Since fair opportunity of hearing was not provided to the petitioners the order dates September 4, 2001 of AAIFR dismissing the appeal is vitiated being opposed to the principles of natural justice. Although the order dated September 4, 2001 has been passed during the pendency of the writ petition and it has not

been impugned in the writ petition but this Court can take notice of subsequent events. Article 226 covers a much wider ground and jurisdiction. High Court while hearing a petition under Article 226 should keep in mind the interest of justice as paramount and appropriate relief may be granted even if the petitioner has not asked for it or has asked for a wrong relief. Petition under Article 226 will not be thrown out on the ground that no proper writ or direction has been prayed for.

7. For these reasons I, in the interest of justice, allow the writ petition and set aside the orders dated August 3, 2001 and September 6, 2001 passed by AAIFR. While restoring the appeal No. 22/2001, I remit the matter to AAIFR to decide it afresh on merits after providing opportunity of hearing to all parties who have been impleaded in appeal and who have sought impleadment in this writ petition. The parties shall appear before AAIFR on September 1, 2004 for seeking further instructions. The status quo shall be maintained as regard to deposits till the disposal of appeal. The AAIFR is expected to decide the appeal as expeditiously as possible preferably within two months thereafter. No costs.