

(2005) 02 CAL CK 0028

In the Calcutta High Court

Case No : M.A.T. No. 132 of 2005 and C.A.N. 443 of 2005

Management, Ludlow Jute Mills

APPELLANT

Vs

Sheikh Moymur and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Citation : (2005) 3 CALLT 9 : (2005) 105 FLR 532 : (2005) 2 LLJ 922

Hon'ble Judges : Soumitra Pal, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Amresh Bhattcharjee and D. Ghosh, Partha Bhanja Chowdhury and Anant Shaw, for the Appellant; Yamin Ali and Sufi Kamal, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Kumar Seth and Soumitra Pal, JJ.—While addressing the Court on the question of grant of stay both the learned counsel for the parties had addressed the Court on the merit of the appeal itself.

2. After having heard the learned counsel for the parties, we are of the view that any order passed on the stay application would virtually] affect the merit of the appeal and no purpose will be served by keeping the appeal pending.

3. In the circumstances, the appeal is treated as on day's list for hearing by consent of the parties and the same is being disposed of along with the application for stay as hereafter.

4. After having heard the learned counsel for the parties, it appears that by its order dated September 13, 2004 passed in W.P. No. 13633 (W) of 2003, the learned single Judge was pleased to direct the Conciliation Officer to submit his report within two months. But the learned counsel for the appellant points out from the expression used in the order that there are some ambiguities tending to create certain confusion. He points out that the Conciliation Officer can neither make reference to the Industrial Tribunal nor the Industrial Tribunal can assume jurisdiction on reference made by the Conciliation Officer. He draws our attention

to the various provisions of the Industrial Disputes Act, 1947. He also points out from the Act that a reference can be made only if an industrial dispute exists and the industrial dispute comes to existence only when it is raised before by the employer and it remains unresolved. He points out that no such dispute was ever raised by the employer. He also draws our attention to the merits of the case with regard to the right to employment. The learned counsel for the appellant refers to the decision in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, to support his contention.

5. Mr. Yamin Ali, learned counsel for the respondent/workmen on the other hand, points out that the dispute was raised before the employer and that the workmen had the right to employment and that an industrial dispute exists. Therefore, there is no infirmity in the order appealed against. However, he, in his usual fairness, points out that the Conciliation Officer can submit his report on the basis whereof it is the State Government which has to form an opinion and make the reference.

6. The law is clear and well settled. A reference can be made to the Industrial Tribunal by the State Government on the basis of the failure report by the Conciliation Officer, provided the State Government forms an opinion that an industrial dispute exists and the same is expedient to be referred to the Tribunal. It is also a settled proposition of law that an industrial dispute comes to existence only when a demand is made by the workmen to the employer and such demand remains unresolved giving rise to a dispute between the workmen and the employer. But these are the questions of fact, which are within the domain of the Conciliation Officer and the State Government. The Writ Court cannot undertake the job of finding out the facts relevant for the purpose and step into the shoes of the Conciliation Officer and usurp the power of the State Government.

7. We, therefore, do not find any reason to decide any of the questions raised by the learned counsel for the respective parties. We keep all these points open. We modify the order dated September 13, 2003 only to the extent that the Conciliation Officer shall give an opportunity of hearing to the parties and decide on the basis of the materials placed before him and submit a report within a period of two months from the date of communication of this order in accordance with law according to his own wisdom and discretion without being influenced by any observations made in this order and shall consider as to the existence of an industrial dispute or otherwise on the basis of the materials placed before it and submit his report to the State Government. On the submission of the failure report, if any, by the Conciliation Officer, the State Government shall form an opinion within a period of two months from the date of submission of failure report by the Conciliation Officer in accordance with law according to its own wisdom and discretion and take appropriate steps as envisaged in law.

8. The decision in *Sindhu Resettlement Corporation Ltd.* (supra) supports the view we have taken.

9. Both the learned counsel for the parties shall communicate the gist of this order to the Conciliation Officer and the Conciliation Officer shall proceed on the basis of the communication of the gist of this order.

10. The appeal and the application for stay are, thus, disposed of.

11. Xerox certified copy of this order, if applied for, be given to the parties on priority basis, if possible within 7 (seven) days.