

(2006) 11 CAL CK 0057
In the Calcutta High Court
Case No : Writ Petition No. 2547 of 2000

National Textile Corporation (WBABO) Ltd. and Another	APPELLANT
Vs	
The Learned Judge, 8th Industrial Tribunal and Others	RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 3A
Constitution of India, 1950 — Article 12, 19(1), 19(2), 226, 298
Deposit Insurance and Credit Guarantee Corporation Act, 1961 — Section 3
Dock Workers (Regulation of Employment) Act, 1948 — Section 5A
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5B
Employees State Insurance Act, 1948 — Section 3
Food Corporations Act, 1964 — Section 16
Industrial Disputes Act, 1947 — Section 10, 2, 39
National Housing Bank Act, 1987 — Section 3
Regional Rural Banks Act, 1976 — Section 3
Unit Trust of India Act, 1963 — Section 3
Warehousing Corporations Act, 1962 — Section 3

Citation : (2007) 2 CALLT 567 : (2007) 115 FLR 1097 : (2007) 1 ILR (Cal) 217

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Soumya Majumder, for the Appellant; Monika Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mitra, J.—This writ petition has been filed challenging the Order No. 69 dated July 15, 1998 in the case being No. VIII-140/94 including order No. 91 dated December 14, 1999 and the award dated June 01, 2000 passed by the 8th Industrial Tribunal respectively. The fact as made out in the writ petition is inter alia as follows:

2. The petitioner No. 1 is a Central Government undertaking and the Central Government exercises pervasive control and day to day administration over the affairs of the petitioner No. 1. The industry of the petitioner No. 1 is carried on

by order under the authority of the Central Government and as such the appropriate Government within the meaning of Section 2(a) of the Industrial Disputes Act, 1947 is Central Government.

3. The respondent No. 4 was appointed in the company in November, 1969. The said respondent had a very unmeritorious service record inasmuch as during his tenure of service he was warned and cautioned 25 occasions.

4. On June 13, 1992 the respondent No. 4 came to join his duty at the main gate of the factory at about 11-00 a.m. instead of formal reporting time 10-00 a.m. as per prevailing Rule of the Mills. The said respondent was not allowed at the gate.

5. On June 15, 1992 the respondent No. 4 rushed to the Chamber of the Deputy Dyeing Master and demanded attendance of June 13, 1992 and misbehaved with his superior and other officers and abused him in filthy language. The respondent No. 4 allegedly thumped on the table of the Deputy Dyeing Master and also snatched the Duplicate Book from the hand of his superior and tore 1/2 pages therefrom and the Deputy Dyeing Master therefore, had to write complaint in another Duplicate Book and sent it to the Deputy General Manager. Subsequently, on June 22, 1992 the respondent No. 4 was charge sheeted for the misconduct committed by him and was suspended forthwith.

6. The respondent No. 4 submitted reply dated June 29, 1992 to the charge sheet. The Management was not satisfied with the reply and initiated a domestic inquiry by appointing an inquiry officer. In the inquiry proceeding the Management adduced evidence, four in number and exhibited the relevant documents. According to the petitioners, the paper/letters/materials which were relied upon by the Management to prove the charges leveled against respondent No. 4 were also produced in the inquiry proceeding and the petitioner alleged that respondent No. 4 was allowed defence representative Sri Ranajit Dutta and the procedures to be followed during the inquiry proceeding was categorically explained to him.

7. After consideration of the deposition of respective parties and their witnesses and also materials produced on record, the inquiry officer on examination and appreciation of the deposition of the parties came to a categorical finding that the Management had successfully established the charges levelled against the respondent No. 4 and found the respondent No. 4 guilty of all the charges. On consideration of the report of the inquiry officer, the disciplinary authority concerned imposed penalty at dismissal on the workman which was communicated through a letter dated June 19, 1993.

8. State Government referred this matter of dismissal to the 8th Industrial Tribunal for adjudication and the learned 8th Industrial Tribunal took up the matter and came to a finding. The company/petitioner No. 1 challenged the decision of the Tribunal mainly on two counts one on the point of jurisdiction i.e. the company submitted that since it is a Central Government undertaking, the

State Government is not the appropriate authority and the reference is bad and the second objection was that the employee was rightly dismissed and in this regard the Tribunal's finding is bad.

9. The company/petitioner No. 1 challenged the decision on various grounds enshrined in the writ petition. The workman submitted affidavit-in-opposition on which he denied the allegations made by the company/petitioner and dealt with the allegations of the company made in the writ petition parawise.

10. The learned Counsel for the petitioners submitted that the finding of the Tribunal is bad and is perverse. The learned Counsel for the petitioner/company submitted that though the respondent No. 4 in his reply to the charge sheet did not specifically deny the incident of February 13, 1992 yet the respondent No. 4 held the inquiry to be invalid on the alleged ground that the Attendance Register of June 13th, 1992 was not produced to the respondent/workman.

11. The learned Counsel for the petitioners submitted that only document relied on by the respondent/workman in the course of domestic inquiry to defend the case relating to the incident of June 13, 1992 was a prescription issued by the hospital which was dated June 20, 1992.

12. The learned Counsel then submitted that the learned Tribunal wrongly held that the respondent No. 4 was prejudiced because of non-production of the Attendance Register, though the workman himself did not ask for the Attendance Register dated June 13, 1992.

13. Then the learned Counsel for the petitioner company submitted that the respondent No. 1 also failed to appreciate the fact that even though he recorded in the said order No. 64 that Attendance Register was produced in the inquiry proceeding but no question was asked on behalf of the workman, still he proceeded to hold the inquiry bad and unfair on the ground of non-production of the Attendance Register.

14. The learned Counsel also submitted that the respondent No. 1 did not consider the fact that the inquiry report, wherein it categorically appeared that the eye witnesses of the incident of June 15, 1992 i.e. the officers who were present in the room of the Deputy Dyeing Master adduced their evidence to corroborate the statement of the presenting officer of the management.

15. The learned Counsel submitted that the Tribunal, while vitiating the domestic inquiry did not consider that the respondent No. 4 had access over all the documents relied upon and there was no violation of the principle of natural justice.

16. The learned Counsel for the petitioner company also raised jurisdictional point and submitted that the respondent No. 1 failed to appreciate that on the date of issuance of the order of reference the Central Government was the appropriate Government in respect of the industry of the petitioner company and the State Government has no jurisdiction to issue an order of reference.

17. The learned Counsel further submitted that by virtue of a Notification, the Central Government directed that the powers exercisable by it under the Industrial Disputes Act in relation to adjudication of reference proceeding be exercised by the State Government and therefore, till such delegation of powers which took effect from the date of issuance of the notification, the State Government did not have any jurisdiction to issue the order of reference.

18. The learned Counsel further submitted that the learned Tribunal gave its finding beyond the records i.e. against the evidence adduced by the parties. The learned Counsel submitted that the learned Tribunal failed to consider that the Doctor's advice being exbt. 14 and the Medical Certificate (exbt. 12) were vital documents and as such it was incumbent upon the respondent No. 1 to decide as to whether those documents were reliable or not.

19. The learned Counsel submitted that the learned Tribunal had no jurisdiction and/or the proceeding is bad initially, from the reference and it should be set aside on that score.

20. The learned Counsel lastly submitted that assumingly but not admitting the fact that the Tribunal had jurisdiction--the Tribunal should have dismissed the proceeding, on merit.

21. On the other hand the learned Counsel for the respondent No. 4 submitted that the domestic inquiry was vitiated inasmuch as he was not supplied with relevant documents which were relied on by the petitioner No. 1 and as such the learned Counsel for the respondent No. 4 submitted that there is gross violation on the part of the authorities when conducting the domestic inquiry.

22. The learned Counsel further submitted that dismissal order was passed by the disciplinary authority is bad in law and is not supported by evidence.

23. The learned Counsel also submitted that in view of the delegation of powers State Government is the appropriate authority to make reference and not the Central Government. The learned Counsel then submitted that the finding of the Tribunal is justified inasmuch as it considered all the evidence adduced by both the parties.

24. The learned Counsel also submitted that the Tribunal came to a finding of fact which cannot come under the judicial review inasmuch as Writ Court cannot sit over the Judgment of the Tribunal as an appellate body.

25. The learned Counsel submitted that the award of the Tribunal should be upheld and he should be reinstated with full back wages.

Points for decision:

1) Whether the State Government, referring the order is the. "appropriate Government" and consequently, the Tribunal has got jurisdiction to decide the present issue or not.

2) If the Tribunal has got jurisdiction then whether the disciplinary proceeding and/or the punishment awarded to the delinquent workman is legal and valid or not.

Decision:

26. In the aforementioned perspective I am to decide first as to whether the State Government is the appropriate Government or not. If the State Government is found to be not the appropriate Government then in that event I am not to decide the legality or validity of the disciplinary proceeding in its merit.

27. Now, let me consider whether in case of the petitioner No. 1 National Textile Corporation, the State Government is the appropriate Government or not. Let me first quote the definition of appropriate Government u/s 2(a) of the Industrial Disputes Act, 1947.

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

(a) appropriate Government" means--

(i) In relation to any industrial dispute concerning 4 [***] any industry carried on by or under the authority of the Central Government, 5-[***] or by a railway company 6-[or concerning any such controlled industry as may be specified in this behalf by the Central Government 7 [***] or in relation to an industrial dispute concerning 8[9[10[11[a Dock Labour Board established u/s 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or 12 [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established u/s 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted u/s 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted u/s 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), 1 [***] or the Life Insurance Corporation of India established u/s Life Insurance Corporation Act, 1956 (31 of 1956), or 2-[the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established u/s 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established u/s 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established u/s 3 of the Unit Trust of India Act (52 of 1963), or the Food Corporation of India established u/s 3, or a Board of Management established for two or more contiguous States u/s 16, of the Food Corporations Act, 1964 (37 of 1964), or 2 [the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established u/s 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], 3-[the National Housing Bank established u/s 3 of the

National Housing Bank Act, 1987 (53 of 1987)], or 4/2 [an air transport Service, or a banking or an insurance company,] a mine, an oil field,) 5-[a Cantonment Board,] or a Central Government, and]

(ii) in relation to any other industrial dispute, the State Government.

28. The learned Tribunal in this regard has relied on the decision reported in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, In this Judgment in paragraph 4 and 5 the definition appropriate Government has been clarified but the learned Tribunal failed to consider that after the Judgment delivered in Heavy Engineering case (supra) a three Judges' Bench of the Hon'ble Apex Court decided the issue which also considered the case of Heavy Engineering Mazdoor Union (supra). This Judgment of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], considered so many decisions and in considering interpretation of Heavy Engineering case the subsequent bench relied on a decision of a Constitution Bench reported in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, In this decision of Air India Statutory Corporation the Hon'ble three Judges' Bench observed "a Constitution Bench, composing the learned Judges who formed the Bench in Heavy Engineering case, considered the issue of interpretation and Bharava, J. speaking on behalf of the majority, had held that "other authority" within the meaning of Article 12 of the Constitution need not necessarily be an authority to perform Government functions. The expression "other authority" is wide enough to include within it every authority created by a statute on which powers are conferred to carry out governmental functions or the functions under the control of the Government." The Judgment in its paragraph 16 made the position crystal clear and observed that the expression given in Heavy Engineering case brings a narrow meaning. Paragraph 16 of this decision is quoted hereinbelow:

16. Keeping this broad spectrum in view, let us consider whether the interpretation given in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, is consistent with the scheme and spirit of the Constitution. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, a Constitution Bench, composing the learned Judges who formed the bench in Heavy Engineering case, considered the issue of interpretation and Bhargava, J. speaking on behalf of the majority, had held that "other authority" within the meaning of Article 12 of the Constitution need not necessarily be an authority to perform governmental functions. The expression "other authority" is wide enough to include within it every authority created by a statute on which powers are conferred to carry out governmental functions or the "functions under the control of the Government". It is not necessary that some of the powers conferred be Governmental sovereign functions to carry on commercial activities. Since the State is empowered under Articles 19(1)(g) and 298 to carry on any trade or business, it was held that Rajasthan State Electricity Board was "other authority" under Article 12 of the Constitution. The significance of the observation is that an

authority under the control of the State need not carry on Governmental functions. It can carry on commercial activities. At this juncture, it is relevant to keep at the back of our mind, which was not brought to the attention of the Bench which decided *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, that Article 19(2) of the Constitution grants to the State, by Clause (ii) thereof; monopoly to carry on, by the State or by a Corporation owned or controlled by the State, any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise. The narrow interpretation strips the State of its monopolistic power to exclude citizens from the field of any activity, to carry on any trade, business, Industry or service, total or partial. A reverse trend which would deflect the constitutional perspective was set in motion by the same Bench in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, decided on February 19, 1969, 24 days prior to the date of decision in *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, in which it was held in main that writ under Article 226 would not lie against a company incorporated under Companies Act and the declaration that dismissal of the workmen was illegal, given by the High Court was set aside. But the operation of the above ratio was put to stop by the Constitution Bench decision in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .* In that behalf, the interpretation given by Mathew, J. in a separate but concurrent Judgment is of vital significance taking away the State action from the clutches of moribund common law jurisprudence; it set on foot forward march under public law interpretation Mathew, J. had held that the concept of State had undergone drastic change. It cannot be conceived of simply as cohesive machinery yielding the thunderbolt of, authority. The State is a service Corporation. It acts only through its instrumentalities or agencies of natural and juridical person. There is a distinction between State action and private action. There is nothing strange in the notion of the State acting through a Corporation and making it an agency or instrumentality of the State with an advent of the welfare State. The framework of the civil service administration became increasingly insufficient for handling new tasks which were often of a specialized and highly technical character Development of policy of public administration, through separate Corporations which would operate largely according to business principles and separately accountable though under the Memorandum of Association or Articles of Association become the arm of the Government. Though their employees are not civil servants, it being a public authority and State Corporation, therefore, is subject to control of the Government. The public corporation, being a corporation of the State, is subject to the constitutional limitation as the State itself. The governing power, wherever located, must be subject to the fundamental constitutional limitation. The Court, therefore, had laid the test to see whether the Corporation is an agency or instrumentality of the Government to carry on business firm the benefit of the public. Thus, the ratio in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, no writ would lie against the

Corporation is no longer a good law. Though Corporation is not a statutory body, as it is not an authority, it is an instrumentality of the State.

29. National Textile Corporation is statutory Corporation and is a creation under an Act. Section 2(a)(i) of the Industrial Disputes Act, 1947 In its very initiation says "appropriate Government means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government". Central Government comes under the definition of the appropriate Government. The Central Government will be the appropriate Government in this case. From the decision of Air India Statutory Corporation (supra) it is amply clear that in case of National Textile Corporation--Central Government is the appropriate Government to refer the dispute before the Tribunal and the State Government is not the authority for the purpose of reference u/s 10 of the Industrial Disputes Act here.

30. Next comes the question of delegation. Obviously, u/s 39 the Central Government has got the power to delegate the authority for the purpose of reference but the delegating circular has been issued on 03/07/1998 but the reference is dated 21/07/1994. Reference under 10 in this case has been made much earlier and the delegating circular cannot be retrospective. In that view of the matter the delegating circular is not applicable in this case and the State Government cannot take advantage of that circular. Reference u/s 10 is, therefore, bad and the Tribunal is without jurisdiction.

31. In that above view of the matter I need not decide the merit of the disciplinary proceeding inasmuch as everything goes with it since the Tribunal is without jurisdiction. The Award passed by the learned 8th Industrial Tribunal is set aside.

The writ petition, is therefore, allowed.

There will be no order as to costs.

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