

**(2004) 06 CAL CK 0010**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 155 of 2004**

N.P. Dutt and Sons

APPELLANT

Vs

Learned Fourth Industrial Tribunal and Others

RESPONDENT

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**Date of Decision :** 29-06-2004

**Acts Referred:**

**Citation :** (2005) 2 LLJ 894

**Hon'ble Judges :** Amitava Lala, J

**Bench :** Single Bench

**Advocate :** Arunava Ghosh, S. Majumdar and S.K. Basu, for the Appellant; L.C. Halder and B. Patra, for the Respondent

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## Judgement

Amitava Lala, J.—In this writ petition an award passed by the learned Fourth Industrial Tribunal, Kolkata is under challenge. The issues before the Tribunal were as follows:

- 1) Revision of Grades and Scales of Pay.
- 2) Revision of attendance-cum-tiffin allowance.
- 3) Revision of travelling allowance.
- 4) Introduction of variable dearness allowance.

2. Therefore, the Tribunal had no other alternative to come to a definite conclusion in respect of such issues but, according to me, the Tribunal had proceeded on a wrong track. The Tribunal held that a Memorandum of Settlement which is charter of demand vide Exhibit G was made by the Company under reference in collusion with the new executive committee which came out from the parent union under reference and the same has violated the principles of natural justice and the same is not binding upon the union under reference at whose instance reference was made. Further in the concluded portion a militating effect is apparent which is as follows:

"...the company had legal obligation to consider the same. As such the company is directed to give effect the charter of demand vide Exhibit 7 in respect of the issues mentioned in the reference immediately with effect from April 1, 1999".

Prima facie, it appears to me that if the Company is directed to consider the charter of demand, no direction can be made upon such management to accept the charter of demand. Therefore, this part is totally perverse in nature. So far the earlier observation is concerned whenever a Judge sits in the Tribunal on such type of issues regarding charter of demand which is normally finalised in between the parties by a Bipartite Agreement the intervention of the authority by a tripartite agreement should not be taken up by with an outlook of dispute between management and workmen and/or trade union so that in future the dispute persists. Court/Tribunal has to behave like mediator, there is a gulf difference between difference and dispute. This stage in an earlier stage which should not be looked out from the angle of dispute. Hence, in such type of settlement it would have been appropriate for the Tribunal to send a notice to the workmen who are the parties to the Memorandum of Settlement already executed so that they can come forward before the Court and can state as to what is the fate of the present charter of demand. It has to be considered by the Tribunal to verify the benefit and loss of the workmen. If it appears that under the earlier charter of demand the present work- 2 men are not getting adequate benefit at par with the employees under Memorandum of Settlement then obviously the Tribunal would come to such conclusion to give effect to such portions which are beneficial for the purpose of the workmen instead of creating more disputes in between the management and workmen by making costly remarks.

4. Thus, instead of going into controversy whether the Memorandum of Settlement arrived at with other workmen is in collusion for the purpose of breaking over the union or its strength, I am of the view that the Tribunal should rehear the matter on the basis of the submissions made by the parties upon notice to the workmen who are purportedly beneficiaries under the settlement so that appropriate inference can be drawn. Thus, I expunge the part of making adverse comments as against the management in respect of the collusion etc. by setting aside the order of Tribunal and hereby request the learned Judge of the Tribunal under the judicial order to come to an appropriate conclusion upon notice to the workmen who had purportedly entered into the Memorandum of Settlement vide Exhibit G to draw a beneficial portrait for the workmen. For effectiveness a time bound programme is made by this Court. Such time is fixed for a period of three months from the date of communication of this order. If necessary, the Tribunal will proceed without giving unnecessary adjournment to any of the parties.

5. Thus, the writ petition stands disposed of.

6. No order is passed as to costs.

7. Let xeroxed Certified copy of this judgment be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the Certified Copy thereof.

8. All parties are to act on a singed copy of the minutes of the operative part of this judgment on the usual undertaking and as per the satisfaction of the officer of this Court in respect as above.