

(1957) 08 P&H CK 0011
In the Punjab And Haryana At Chandigarh

Palace Cinema

APPELLANT

Vs

Rameshwar Dayal

RESPONDENT

Date of Decision : 06-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1958) 2 LLJ 239

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Judgement

Falshaw, J.—This petition under Article 226 of the Constitution has been filed by the management of the Palace Cinema, Roshanara Road, Delhi, In the following circumstances.

2. An industrial dispute has arisen between the petitioner and its workmen which has been referred to Mr. Rameshwar Dayal, Additional Industrial Tribunal, Delhi, who is cited as the respondent in the petition, by the Government under the provisions of the industrial Disputes Act of 1947. One of the Items in the dispute between the management and the workers relates to the payment of bonus for the years 1953-54 and 1954-55. In this connexion the workmen requested to be supplied with copies of the balance sheets and profit and loss accounts for the relevant years and this was ordered by the tribunal, although it was noted at the time that these documents could not be claimed as a matter of right and that they should be treated as confidential in accordance with the provisions of the Act. At the hearing when these documents were supplied, it is alleged by the petitioner, and there is nothing in the order of the tribunal which is now impugned to contradict the allegation, that without even studying the balance sheets and the statements of profit and loss account which were certified by a chartered accountant, or without even alleging by an affidavit or other wise that any particular item in these documents was incorrect, the representative of the workmen applied for inspection of the firm's account books and other relevant documents.

3. This was strongly resisted on behalf of the management. The tribunal, after considering a number of decisions, while apparently accepting the general principle that duly audited balance sheets must be taken to be correct unless they are shown to be wrong, was of the opinion that the workmen could only show the balance sheets and profit and loss abatement to be wrong by checking them in the light of the account books. It was accordingly ordered on 5 October 1956, that the management should produce the ledger, cash-book and journals for the inspection of the workmen, with an intimation that if it was thought necessary a further order would be passed allowing inspection of vouchers and other auxiliary registers and books.

4. In the present petition it is objected on behalf of the management that this order is entirely illegal and without jurisdiction and that although the Industrial Disputes Act has given the tribunal the power to call for and allow inspection of documents, it does so subject to the provisions of the Civil Procedure Code, which have not even been referred to, much less complied with, in the order now attached.

5. It is also pointed out that at the time when the order of the tribunal was passed there were two decisions by High Courts on this very point which were either not brought to the notice of the tribunal or have been ignored by it. The first of these is the decision of Sri Rajagopalan, J., in *Mettur Chemical and Industrial Corporation, Ltd. v. their workers* 1955-1 L.L.J. 27 and the other is the decision of Sinha, J., in *Burn and Co. Vs. Jitendra Nath Maitra and Others*, . Both these cases related to disputes between the companies and their workmen regarding the payment of bonus, and in both the cases the companies had been ordered to allow inspection of the account books by the workmen. In the former case this order was passed after balance sheets had already been supplied and an application had been submitted that the genuineness and accuracy of the figures was not accepted by the workmen. In the other case the order seems to have been passed almost at the outset of the proceedings before the industrial tribunal without even the supplying for inspection of " the balance sheets. In both cases the learned Judges held that the order of the tribunal for inspection of the account books of the companies by the workmen was illegal and that such an order could only be passed after the relevant provisions of the CPC had been complied with. The observations of Sri Bajagopalan, J., at p. 31 appear to be particularly pointive. The passage in question reads:

The second requirement mentioned above that the party applying for inspection is entitled to inspect the documents appears to be a condition full proof of which the Court must insist upon before ordering inspection of the documents that fall within the scope of Rule 18(2) of order XI, Civil Procedure Code. Whether the right to inspect claimed in a given case is to be held established or not must of course depend on the circumstances of that case and it is neither desirable nor even possible to prepare an exhaustive list of cases that would amount to an established right. But unless the right is established, the Court has no power to

order inspection under the terms of rule 18(2) of order XI, Civil Procedure Code. The need for an affidavit may at first sight appear to be but a rule of procedure failure to conform to which may not affect the power to the Court to order inspection. But when we examine the classes of documents excluded from the purview of Clause 2 of Rule 18 of Order XI, Civil Procedure Code, the need for an affidavit, before the Court considers an application for inspection of the documents that do fall within the scope of Rule 18(2), seems to be obvious.

6. The learned Judge has later observed on P. 33 :

An assertion that the workers' union did not accept the accuracy of such balance sheets and profit and loss accounts is certainly not proof of a right to inspect accounts of which those statements were passed.

7. It may also be mentioned that a similar point arose in this Court before Bishan Narain, J., in Shambu Nath and Sons Ltd. Vs. Additional Industrial Tribunal and Another, The nature of dispute in that case was the same and the tenor of the judgment and the final conclusion arrived at are on the same lines as in the cases referred to above. No authority to the contrary was cited and I am in respectful agreement with the view taken in these cases. The result is that I accept the petition and quash the order of the tribunal dated 5 October 1956. I order that the provisions of law must be complied with before any order is passed permitting the workmen to inspect the firm's accounts In the circumstances, I order that the parties shall bear their own costs.