

(2004) 09 CAL CK 0003

In the Calcutta High Court

Case No : M.A.T. No. 2919 of 2004 and C.A.N. No. 7427 of 2004

Pradip Bhattacharjee

APPELLANT

Vs

Hindusthan Vegetable Oils Ltd.

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2005) 1 CHN 506 : (2005) 106 FLR 476 : (2005) 2 LLJ 503

Hon'ble Judges : Asit Kumar Bisi, J;Altamas Kabir, J

Bench : Division Bench

Advocate : R.N. Chatterjee and Manisha Chatterjee, for the Appellant; S.K. Dutta, A. Mukherjee, S. Mitra and U.K. Bose, for the Respondent

Judgement

1. While taking up the application for injunction filed on behalf of the appellants, the appeal itself was taken up for consideration and the parties were heard extensively on the questions raised in the appeal.

2. This appeal arises out of an order dated 27th July, 2004 passed by the learned Single Judge on an application u/s 17B of the Industrial Disputes Act, 1947, filed on behalf of the workmen in the writ application filed on behalf of the respondents herein, being W. P. No. 29220(W) of 1997, challenging an award passed by the learned Judge, Fifth Industrial Tribunal on 12th September, 1996.

3. In order to appreciate the submissions made on behalf of the respective parties and the judgment under appeal, it is necessary to set out the facts leading to the passing of the award.

4. By an order of reference dated 23rd December, 1988, the State Govt. referred the industrial dispute between the writ petitioner company, M/s. Hindusthan Vegetable Oil Corporation Ltd., and the workman represented by the Hindusthan Vegetable Oil Corporation Workmen's Union for adjudication on two issues namely : (1) whether termination of service of 56 workmen as per the enclosed list, was justified and to what relief, if any, are the workmen entitled? and (2) to

what extent the principal employer was responsible for such termination and what relief the workmen were entitled from the principal employer?

5. On conclusion of the proceeding, the learned Tribunal passed its award on 12th September, 1996, indicating that with regard to the first issue the termination of service of 56 workmen as per the enclosed list in the order of reference was not proper and the workmen were entitled to get reinstatement with back wages from 1st January, 1986 till resumption of their duties. Regarding issue No. 2, it was held that the principal employer, M/s. Hindusthan Vegetable Oil Corporation Ltd. was responsible to bear the liability of the concerned workmen and accordingly directed to absorb them in their employment and to pay back wages to the workmen whose names appeared at serial Nos. 37, 39, 43, 44, 45, 46, 50 and 51 respectively, in the list attached to the order of reference. In the case of the other workmen as named in the order of reference the learned Tribunal Judge directed that they would also be absorbed and paid their back wages subject to verification of their enrolment in any record of the principal employer or contractor.

6. As indicated hereinbefore, the said award is the subject-matter of challenge in a pending writ application filed by M/s. Hindusthan Vegetable Oil Corporation Ltd. It appears that during the pendency of the writ petition, an application was filed by the Union u/s 17B of the Industrial Disputes Act for grant of interim relief to the workmen concerned. The said application was heard and disposed of on 22nd November, 2000, with the observation that no relief as contemplated u/s 17B could be given to any of the persons, whose names were included in the list annexed to the order of reference, in the absence of any affidavit affirmed by the individual workmen for the purposes of the proviso to Section 17B of the Act. Liberty was, however, given to the applicant to file a fresh application u/s 17B to be accompanied by affidavits to be affirmed by each of the workman claiming relief thereunder.

7. Subsequently, a fresh application u/s 17B of the Industrial Disputes Act, 1947, being CAN No. 146 of 2001, appears to have been filed on behalf of the workmen accompanied by separate affidavits affirmed by the workmen stating that they had not been employed in any establishment during the pendency of the writ petition before this Court. The said application was taken up for disposal on 21st March, 2002, and was disposed of in the absence of the writ petitioner company. The learned Single Judge who was considering the said application recorded the fact that in terms of the leave granted by the earlier order dated 22nd November, 2000, the workmen had filed a fresh application u/s 17B of the Industrial Disputes Act, 1947 and that the workmen had filed affidavits as required under the proviso to Section 17B of the above Act. The learned Single Judge, therefore, came to a finding that the writ petitioner company, who is the employer, is liable to pay the workmen during the pendency of the writ proceeding full wages last drawn by the workmen inclusive of any maintenance allowance admissible to them under the rules. A direction was accordingly given to the writ petitioner

company to pay to the 56 workmen named in the application full wages last drawn by them, inclusive of any maintenance allowance admissible to them, from 15th December, 1997 till the date of the order, within a period of six weeks from the date of communication of the order.

8. It appears that the said directions of the learned Single Judge on the Section 17B application filed on behalf of the workmen were complied with by the writ petitioner company for some time and, thereafter, such payment was discontinued and an application was made for recalling of the order passed on 22nd August, 2002 on the plea that the matter had been heard and decided in the absence of the management. On account of such discontinuance, a contempt application was taken out on behalf of the workmen and the same came up for consideration before the learned Single Judge together with the application filed on behalf of the management for recalling of the order passed in the earlier application. The said two applications were taken up for consideration on 27th July, 2004, by the learned Single Judge and the learned Judge was of the view that until and unless the contempt rule, being W.P.C.R.C. No. 11216CW) of 2002, and the application for recalling of the order, being CAN No. 7750 of 2002, were not formally disposed of, the dispute as regards the interim relief would continue, which would cause a delay in hearing of the writ application. Thereafter, in disposing of the contempt application and the rule and the application for recalling of the order dated 22nd August, 2002, the learned Single Judge directed the company to deposit the entire claim up to date with the Registrar General, Appellate Side of this Court, in two accounts, one in the name of the 8 persons and the other in respect of 48 persons by 9th August, 2004. The learned Registrar General was directed to keep the said amounts deposited in short-term fixed deposits which were to be kept renewed from time to time until further orders of the Court. Regarding the balance amount, if any, the learned Judge directed that the same would be deposited later on at the time of hearing of the application. It is against the said order of the learned Single Judge that the instant appeal has been preferred.

9. Appearing in support of the stay application, Mr. R. N. Chatterjee, learned Advocate, submitted that the order of the learned Single Judge under appeal was contrary to the purport of Section 17B of the Industrial Disputes Act, 1947 and that the learned Single Judge ought to have directed the writ petitioner company to pay to the workmen their separate claims u/s 17B instead of directing the company to deposit the amounts with the Registrar General of this Court. Mr. Chatterjee submitted that the very purpose of Section 17B had thereby been frustrated and the very object of the said Section had been defeated.

10. On behalf of the writ petitioner company Mr. Dutta, learned Advocate, took a preliminary objection regarding maintainability of the appeal on the ground that the order under challenge was, in fact, a consent order passed at the invitation of the parties, and, accordingly, the appeal was not maintainable at the instance of the parties. Mr. Dutta pointed out that it had been recorded by the learned

Single Judge that the sum was being deposited on the basis of consensus arrived at between the parties and that although the learned Judge was inclined to give benefit of interim relief to 8 of the workmen who had been named in the award, the learned Advocate for the workmen had submitted that the workmen were not inclined to get the divided benefit and, on the other hand, agreed that the entire amounts should be deposited with an appropriate independent person.

11. Apart from the above, Mr. Dutta also tried to urge that the workmen not having been named and there being a direction that first of all their credentials as to whether they were at all workmen under the company were to be verified and that the application for recalling the ex parte order having been heard and disposed of by the impugned order on consent, it was no longer open to the workmen to claim the benefits of interim relief in an appeal against the said order.

12. One other submission was advanced on behalf of the company that an individual for whose benefit a statutory right had been given was entitled to waive such right notwithstanding the fact that such right had been conferred by the statute. In support of the said submission, reliance was placed on two judgments of the Hon"ble Supreme Court in the case of (i) Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, and (ii) in the case of S. Raghbir Singh Gill Vs. S. Gurcharan Singh Tohra and Others, , wherein it was held that where no public interest was involved an individual was entitled to waive the rights that may have been deserved for him in a statute in circumstances which were to his benefit.

13. Mr. Dutta submitted that having regard to the above, since the statutory right u/s 17B of the Industrial Disputes Act had been waived on behalf of the workmen, the same claim could not now be pursued in appeal.

14. We have carefully considered the submissions made on behalf of the respective parties and in particular those made by Mr. Dutta appearing for the writ petitioner company.

15. As to the maintainability of the appeal which has been preferred against an order which appears to have been passed at the invitation of the parties, we are of the view that the provisions of Section 17B of the Industrial Disputes Act being a beneficial piece of legislation, in the event the same is permitted to be waived it would defeat the very object and purpose of the said provision. In fact, in our view, in his anxiety to safeguard the interest of the workmen, the learned Single Judge appears to have missed the object of Section 17B of the said Act. As has been repeatedly held by the different Courts, relief u/s 17B of the Industrial Disputes Act is in the nature of interim relief to be given to the workmen in case of a challenge to an award in their favour directing reinstatement in service. The said question had fallen for consideration in the earlier proceeding and had been decided in favour of the workmen and had also been acted upon by the company. Subsequently, the company had discontinued the payment, resulting in filing of the contempt application.

16. As indicated hereinbefore, the order passed by the learned Single Judge directing that the amounts claimed on behalf of the workmen should be deposited with the Registrar General of this Court, is contrary to the very purpose of Section 17B and in our view, even if the right u/s 17B had been waived, such order could not have been passed.

17. The decisions as cited by Mr. Dutta are general principles of law which, in our view, cannot be applied to the facts of this case involving relief to be given to workmen u/s 17B of the Industrial Disputes Act pending decision of the challenge to an award passed in their favour.

18. We, therefore, allow the application for injunction and the appeal by setting aside the order passed by the learned Single Judge directing the writ petitioner company to deposit with the Registrar General of this Court the amounts claimed by the workmen, and, on the other hand, we direct the writ petitioner company to pay to the 56 workmen in question the amounts as directed in terms of the order passed by the learned Single Judge on 21st March, 2002 in W. P. No. 29220(W) of 1997, with effect from the date when such payment was discontinued.

19. We also make it clear that this order is confined to the workmen's application for interim relief u/s 17B of the Industrial Disputes Act, 1947 and should not in any way influence the learned Single Judge while disposing of the writ application wherein the award as such has been challenged.

20. The appeal and the application for stay are both disposed of accordingly but there will be no order as to costs. Having regard to the fact that payment in terms of Section 17B is required to be made during the pendency of a challenge to an award, it is hoped that the learned Single Judge would be in a position to dispose of the writ petition at an early date.

21. The prayer for stay of this order made on behalf of the writ petitioner company is considered and refused having regard to the view taken by us here in above.