

(2012) 03 CAL CK 0043
In the Calcutta High Court
Case No : M.A.T. 1311 of 2011

Pradip Kumar Banerjee

APPELLANT

Vs

Airport Authority of India and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003 — Regulation 27

Citation : (2012) 1 CALLT 508 : (2012) 133 FLR 655 : (2012) LLR 743

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Arabinda Chatterjee, Mr. Niloy Sengupta and Ms. Ahana Sikdar, for the Appellant; Arijit Choudhury, D. K. Dhar and Mr. Anirban Dutta, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The appellant herein while working with the respondent authority as an Assistant Engineer (Civil) was arrested along with another Junior Engineer under the Prevention of Corruption Act on the charge of demanding and accepting bribe from a representative of a Contractor and they were suspended on account of the aforesaid arrest. A CBI Case was registered against the said appellant and the Junior Engineer. The learned Special Judge, CBI Court finally disposed of the aforesaid CBI Case, holding the appellant guilty of the charges, although the other co-accused Junior Engineer was acquitted.

2. Because of the aforesaid conviction, the appellant herein was dismissed from service. Thereafter the appellant preferred an appeal before the High Court challenging the aforesaid conviction.

3. The appellant herein also filed a writ petition before this court challenging the order of dismissal since the same was passed without holding any enquiry. The aforesaid writ petition being W.P. No. 22034 (W) of 2000 was disposed of by a learned Judge of this court with the direction that in the event the petitioner was

acquitted by the Appeal Court and the conviction was set aside, then it would be open to the petitioner to make appropriate representation before the respondent authority and the respondent authority would consider the said representation in accordance with law. The operative part of the order dated 5th February, 2001 passed in the aforesaid writ petition by the learned Single Judge is set out hereunder:-

In the light of the above observation, the instant writ application is disposed of with a direction that in the event the petitioner is acquitted by the appeal Court and the conviction is set aside then it would be open to the petitioner to make appropriate representation before the respondent authority who shall thereupon consider the same in accordance with law and in the light of the said judgment.

4. The Criminal Appeal preferred before the High Court challenging the order of conviction passed by the learned Judge, 1st Special Court, Alipur in Special Court Case No. 8 of 1993 was ultimately allowed and the order of conviction and sentence were set aside.

5. After the aforesaid acquittal, the appellant herein sought for reinstatement in service in terms of the order passed in the writ petition being W.P. No. 22034 (W) of 2000 on 5th February, 2001. The respondent authorities, however, refused to allow the aforesaid prayer of the appellant as a result whereof another writ petition was filed by the appellant herein being W.P. No. 21324 (W) of 2004 which was disposed of by another learned Judge of this Court with a direction to the Chairman of the respondent no. 1 to consider the grievances of the appellant upon giving him an opportunity of hearing.

6. The Chairman of the respondent no.1 after hearing the appellant herein directed that the major penalty proceeding should be initiated against the appellant at the earliest under the AAI Employees (CDA) Regulations, 2003 since the said Chairman was of the opinion that the High Court had set aside the order of conviction of the appellant on benefit of doubt, but had not exonerated the said appellant on merits. The said Chairman being the appellate authority however set aside the order of dismissal dated 13th July, 2000 and placed the appellant under suspension with effect from 13th July, 2000.

7. The aforesaid decision of the appellate authority was communicated to the appellant herein by the General Manager (Personnel) by the written communication dated 24th March, 2005. The aforesaid decision of the appellate authority was thereafter challenged by the appellant herein by filing another writ petition before this court being W.P. No. 8256 (W) of 2005.

8. During the pendency of the said writ petition, a memorandum was issued proposing to hold an enquiry against the appellant herein by the Disciplinary Authority. After prolonged hearing, a learned Judge of this court ultimately allowed the writ petition as well as the connected application, set aside the impugned decision of the appellate authority as communicated by the General Manager (Personnel) by the written communication dated 24th March, 2005 and

quashed the departmental proceeding subsequently initiated during the pendency of the writ petition by the memo dated 7th September, 2005. However, an appeal was preferred from the aforesaid judgment and order passed by the learned Single Judge before the Division Bench of this court presided over by the Chief Justice Hon^{ble} S.S. Nijjar (as His Lordship then was). The aforesaid Division Bench allowed the appeal and set aside the judgment and order passed by the learned Single Judge, specifically holding that the authorities were justified in issuing the chargesheet to the appellant. The aforesaid Division Bench was of the opinion that the disciplinary proceeding could continue as the acquittal of the appellant was on benefit of doubt and due to insufficient evidence. After disposal of the aforesaid appeal by the Division Bench, the appellant participated in the disciplinary proceeding. The Enquiry Officer held the enquiry and found the appellant guilty of the charges. The Enquiry Officer specifically observed that the appellant herein had exhibited lack of integrity and also acted in a manner unbecoming of an employee of the authority. The appellant thereafter submitted a representation before the Disciplinary Authority against the findings of the Enquiry Officer. The Disciplinary Authority thereafter imposed the penalty of dismissal upon the appellant. Challenging the decision of the Disciplinary Authority, an appeal was preferred by the appellant before the Appellate Authority. In the mean time the Disciplinary Authority Mr. V. P. Agarwal became the Chairman of the respondent no. 1. Most unfortunately, the said Chairman namely, Mr. V. P. Agarwal did not hesitate to act as an Appellate Authority in order to decide the correctness of his own order which was passed earlier by him as Disciplinary Authority. Surprisingly, the said Appellate Authority affirmed his own order which was passed earlier by him as Disciplinary Authority and dismissed the appeal preferred by the appellant. In the aforesaid circumstances, appellant had to file another writ petition being W.P. No. 17503 (W) of 2009 and a learned Judge of this Court was pleased to set aside the said order passed by the Appellate Authority and directed the authorities to form a committee from the Board Members in order to decide the appeal preferred by the appellant herein in place of the Chairman Mr. V. P. Agarwal.

9. Accordingly, the Appellate Committee consisting of the Board Members considered the appeal preferred by the appellant herein and affirmed the decision of the Disciplinary Authority.

10. Challenging the order of the aforesaid Appellate Committee, another writ petition was filed by the appellant herein which was finally disposed of by the impugned judgment and order under appeal passed by the learned Single Judge. The learned Single Judge upon considering the submissions of the learned counsel of both the parties and considering the relevant records relating to the disciplinary proceedings was pleased to dismiss the writ petition filed by the appellant herein. The appellant thereafter, filed the instant appeal assailing the aforesaid judgment and order passed by the learned Single Judge.

11. The learned counsel representing the appellant submitted that the charges

levelled against the appellant were baseless and vague. The said learned counsel further submitted that the findings of the enquiry officer in respect of the appellant were perverse and liable to be set aside.

12. Mr. Arabinda Chatterjee, learned counsel representing the appellant submitted that the Disciplinary Authority erroneously mentioned in the statement of imputations that the appellant herein was responsible for taking/checking measurements and preparing the bills in respect of the works executed by M/s. Tarashankar Construction Company. Mr. Chatterjee further submitted that the Disciplinary Authority entertained an allegation regarding the demand of the alleged bribe of Rs. 6000/- by the appellant along with one other employee for the purpose of clearing the bill of Rs. 7838/-.

13. Mr. Arabinda Chatterjee submitted that the Enquiry Officer deliberately ignored the relevant evidence on record.

14. Mr. Chatterjee, learned counsel of the appellant submitted that the enquiry officer should not have ignored the fact that the P.W.3 being the Executive Engineer issued the direction to deduct/withhold payment of Rs. 2000/- from first running bill of the said Tarashankar Construction Company on account of slow progress of work. According to Mr. Chatterjee, appellant being the Assistant Engineer had no role to play in preparation of bills and therefore the question of demanding any bribe for preparation of the bills could not and did not arise.

15. The learned counsel of the appellant specifically submitted that the biased attitude of the Enquiry Officer against the appellant would be apparent from the fact that the said Enquiry Officer ignored the deposition of P.W. 3 wherein the said P.W.3 categorically admitted in cross-examination that the appellant had no role to play in preparing the bills and the direction to withhold the payment of Rs. 2000/- from the first running bill of the said Tarashankar Construction Company was issued by the said P.W.3.

16. Mr. Chatterjee further submitted that the enquiry officer exceeded his jurisdiction in coming to the conclusion that the appellant herein had exhibited lack of integrity and acted in a manner unbecoming of an employee of the authority.

17. Mr. Chatterjee also submitted that the orders passed by the Disciplinary Authority as well as Appellate Authority are non-speaking orders and therefore the same are liable to be quashed on the ground of violation of principles of natural justice. The learned counsel of the appellant referred to and relied on the following decisions in support of his aforesaid contentions :-

1. Roop Singh Negi Vs. Punjab National Bank and Others,
2. G. Vallikumari Vs. Andhra Education Society and Others,
3. Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, 240.

18. Mr. Chatterjee also submitted that the Enquiry Officer while conducting the enquiry proceeding admittedly did not accept the judicial findings of the Criminal Appellate Court. Mr. Chatterjee submitted that the Criminal Appellate Court had categorically disbelieved the statement of P.W. 2 due to contradiction with the post trap Memorandum. According to the learned counsel of the appellant, Enquiry Officer took a different view in this regard even in absence of any new evidence. Mr. Chatterjee submitted that the evidences available before the Criminal Court as well as the Enquiry Officer were similar and identical and therefore, the Enquiry Officer had no scope and/or authority to arrive at different findings ignoring the specific findings of the judicial authority. Mr. Chatterjee referred to and relied on the following decisions in support of his aforesaid contentions:-

1. State of West Bengal Vs. Bidyasagar Pandey, reported in (2011) CLJ (Cal) 57 Paragraph 15.

2. G.M. Tank Vs. State of Gujarat and Another,

19. Mr. Chatterjee submitted that the charge of bribery has not been proved beyond doubt in the instant case. Mr. Chatterjee submitted that the charge of corruption/bribe in a disciplinary proceeding must be proved beyond doubt and can not be proved on mere possibilities and hearsay evidence.

20. Mr. Chatterjee also submitted that in the instant case complainant did not even appear before the Enquiry Officer in order to adduce any evidence and therefore, in the absence of a vital witness namely, the complainant, from whom the appellant allegedly demanded bribe, the disciplinary proceeding was vitiated.

21. The learned counsel of the respondent, Mr. Arijit Chowdhury, however, submitted that the misconduct of taking a bribe has been established in the domestic enquiry by direct evidence of the Police Officer who set the trap and witnessed the transaction.

22. Mr. Arijit Chowdhury submitted that it is not at all necessary to examine the complainant in a domestic enquiry and hearsay evidence is admissible in such proceedings. Mr. Chowdhury relied on the following decisions in support of his aforesaid contentions :-

1. J.D. Jain Vs. Management of State Bank of India and another,

2. State of Haryana and Another Vs. Rattan Singh,

23. Mr. Chowdhury submitted that acquittal of an employee by a Criminal Court does not prevent his employer from taking disciplinary proceedings against him on the same charge.

24. Mr. Chowdhury also submitted before this court that the orders of the Disciplinary Authority and the Appellate Authority are very much speaking orders. Mr. Chowdhury submitted that the Disciplinary Authority inflicted the punishment on the appellant upon considering the findings of the Enquiry Officer

and also considering the relevant records in relation to the disciplinary proceedings. Mr. Chowdhury submitted that the Enquiry Officer in his report has elaborately dealt with the submissions of the appellant and by accepting that report, the Disciplinary Authority virtually passed an order of affirmation and therefore, the said order need not be an elaborate one. Mr. Chowdhury referred to the representation of the appellant before the Appellate Authority and submitted that the appellant was well aware of the grounds on which the order of punishment was passed by the Disciplinary Authority. Mr. Chowdhury also referred to the order passed by the Appellate Authority and submitted that the said Appellate Authority had passed a speaking order. Mr. Chowdhury referred to and relied on a decision of the Supreme Court in the case of Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, and submitted that the Enquiry Officer in his report has elaborately dealt with the submissions of the appellant and therefore, while accepting the said report of the Enquiry Officer detailed reasonings are not at all required to be given by the Disciplinary Authority.

25. Going through the available records and specially scrutinizing the enquiry report, we find that the Enquiry Officer mainly relying on the evidence of P.W.2 held the appellant guilty of the charges ignoring the judicial findings of the Criminal Court. The Enquiry Officer furthermore, did not properly appreciate the evidence adduced by P.W.3. It appears from the evidence on record that P.W. 3 instructed the appellant to withhold a sum of Rs. 2000/- from the first running bill of the Contractor due to slow progress of work. Therefore, it cannot be said that the appellant herein was responsible for non-payment of the bills of the Contractor in time. The conduct of the Contractor should also be taken into consideration specially when we find that the Superior Authority like P.W. 3 was compelled to issue instruction for withholding of the running bill of the said Contractor. In any event, the Enquiry Officer cannot overreach the judicial findings in respect of P.W.2. The Enquiry Officer relied on the evidence of P.W. 2 (D. N. Biswas) for the purpose of holding the appellant guilty of the charges, not remembering that the evidence of P.W. 2 has not been accepted by the Criminal Court. In the case of G. M. Tank Vs. State of Gujarat & Ors. (supra), Hon''ble Supreme Court observed that the findings of the Judicial Authority should prevail upon the findings of the Disciplinary Authority on any particular issue. In the instant case, the Enquiry Officer did not adhere to the aforesaid principle as specifically laid down by the Hon''ble Supreme Court in the case of G. M. Tank (supra).

26. Furthermore, the appellant submitted a detailed representation before the Disciplinary Authority on the findings of the Enquiry Officer. In the aforesaid representation, the appellant herein raised various objections and furnished several grounds for rejecting the findings of the Enquiry Officer.

27. The objections raised by the appellant in the aforesaid representation should have specifically been considered by the Disciplinary Authority in an appropriate manner for the purpose of arriving at an independent decision. The Disciplinary

Authority did not deal with the specific objections raised by the appellant while considering the representation of the appellant. The Disciplinary Authority should have disposed of the representation of the appellant with regard to the findings of the Enquiry Officer by a reasoned order specifically dealing with the objections raised by the appellant.

28. The Disciplinary Authority did not deal with the specific objections of the appellant as mentioned in the representation in order to arrive at independent findings in respect of the said objections and most unfortunately inflicted punishment on the said appellant without disclosing the reasons for not allowing the said objections raised by the appellant herein. The relevant extracts from the order of the Disciplinary Authority are set out hereunder :-

7.WHEREAS the Inquiring Authority submitted his report wherein he has concluded that all the charges levelled against Shri Banerjee stand proved. Whereas Shri Banerjee was provided a copy of the Inquiry Report for his submissions, if any, vide letter dated 20.11.2008, Shri Banerjee submitted his representations against the Inquiry Report vide his letter dated 16.11.2008.

8. WHEREAS keeping in mind all the facts and circumstances of the case, the undersigned has come to the conclusion that the Inquiry Officer, after conducting the inquiry as per the laid down procedure, has given well-reasoned conclusion, establishing all the charges against Shri Banerjee. On the other hand, Shri Banerjee has not put forth any reasonable submissions or new facts in his letter dated 16.11.2008, which may necessitate taking a different view than what has been concluded by the IO. However, the submissions made by Shri Banerjee vide his representation dated 16.11.2008 against the Inquiry Report were taken cognizance of during the detailed inquiry proceedings. Further, the undersigned also observed that on direction of the Hon'ble High Court. Shri Banerjee was given personal hearing and also immediate relief on the basis of his oral submissions, resulting in setting aside his dismissal and placing him under deemed suspension.

9. AND WHEREAS having considered the charges levelled against Shri Banerjee, finding of the Inquiry Officer, facts brought on record during the inquiry, the submission of Shri Banerjee and taking into account the fact that the Hon'ble Court has let him off not on merits, but on benefit of doubt, the undersigned is of the considered opinion that the ends of justice would be met if the major penalty of "dismissal" is imposed on Shri P. K. Banerjee, Asstt. Manager (Engg. Civil) (U/S).

10. NOW THEREFORE the undersigned being the Disciplinary Authority in exercise of the powers conferred by Regulation 27 (h) of AAI Employees (Conduct, Discipline & Appeal) Regulations, 2003, hereby impose the penalty of "dismissal" upon Shri P. K. Banerjee, Asstt. Manager (Engg. Civil) (U/S) with immediate effect.

11. Appeal against this order lies with the Appellate Authority and can be

preferred within one month from the date of receipt of this Order.

29. The biased attitude of the Disciplinary Authority namely, Shri V. P. Agarwal has been demonstrated afterwards when said Shri Agarwal did not hesitate to act as an Appellate Authority for the purpose of deciding the appeal preferred from his own order which he passed as a Disciplinary Authority. The said Shri V. P. Agarwal had no hesitation to act as Appellate Authority and pass an order rejecting the appeal preferred by the appellant herein upon affirming his own order passed as Disciplinary Authority. Subsequently, however, this court had quashed the said order of Shri V. P. Agarwal passed as the Appellate Authority. Subsequently, a different Appellate Authority was constituted pursuant to the order passed by this court in order to consider the appeal preferred by the appellant herein and the said subsequently constituted Appellate Authority also affirmed the order of the Disciplinary Authority without furnishing proper reasons. The relevant extracts from the subsequent order passed by the Sub-Committee of the Board of Members of the Airport Authority of India which ultimately acted as Appellate Authority are set out hereunder :-

14.WHEREAS the Sub-Committee, is unanimously of the firm opinion that the Disciplinary Authority, vide order dated 23.04.2009, had imposed the penalty of dismissal, in commensurate with the established charges/ omissions & commissions on the part of Shri Banerjee, after taking into consideration the conclusions highlighted in the report of IO, submissions of CO in response to IO report and facts & circumstances of the case. The imposition of the penalty by the Disciplinary Authority was ordered after critical analysis of all the facts of the case and therefore cannot be faulted with.

15. AND WHEREAS considering all the facts of the case, appeals and representations of Shri Banerjee against the order of DA, the Sub-Committee is of considered opinion that his submissions contained in the appeal dated 28.05.2009, supplementary appeal dated 16.12.2009 and representation dated 08.01.2010 and personal hearing on 08.01.2010 are devoid of merit and substance as imposition of penalty of dismissal upon Shri P K Banerjee by the Disciplinary Authority, vide order dated 23.04.2009 was on the merits of the case, in which all the laid down procedure was meticulously followed.

16. NOW THEREFORE, keeping in view all the facts and circumstances of the case, the Sub-Committee of the Board of AAI, being the Appellate Authority, has concluded that there are no new facts or details of evidence, which would merit taking a decision other than the one taken by the Disciplinary Authority resulting in the issuance of the penalty order on the merits of the case, and therefore, the Sub-Committee has rejected the appeal dated 28.05.2009, supplementary appeal dated 16.12.2009 and his representation dated 08.01.2010, without any modification in the penalty Order dated 23.04.2009 of the Disciplinary Authority.

17. The aforesaid decision of the Sub-Committee of the Board of AAI, being the Appellate Authority, is hereby conveyed to Shri P K Banerjee, Ex.AM (Engg.-Civil).

30. It is true that the Enquiry Officer furnished elaborate reasons in support of his findings but the Disciplinary Authority as well as the Appellate Authority did not assign any reason while affirming the findings of the Enquiry Officer. The appellant herein submitted a representation raising serious objections with regard to the findings of the Enquiry Officer before the Disciplinary Authority. Therefore it was the duty of the Disciplinary Authority to deal with the specific objections raised on behalf of the appellant in respect of the findings of the Enquiry Officer before accepting the report of the said Enquiry Officer and affirming his findings.

31. Similarly, the Appellate Authority also did not deal with the specific objections raised on behalf of the appellant herein while affirming the decision of the Disciplinary Authority. The appellant submitted a detailed representation raising serious objections with regard to the decision of the Disciplinary Authority. The Appellate Authority did not deal with the specific objections raised on behalf of the appellant herein and in a most casual and mechanical way affirmed the decision of the Disciplinary Authority.

32. The Enquiry Officer did not rely on the specific findings of the Judicial Authority in respect of the evidence of P.W. 2 (D. N. Biswas) and also did not rely on the evidence of P.W. 3 in an appropriate manner while holding the appellant guilty in respect of the charges levelled against him. The specific objections raised by the appellant with regard to the findings of the Enquiry Officer were not even dealt with by the Disciplinary Authority and subsequently, also by the Appellate Authority.

33. Furthermore, the complainant Mr. Shibnath Pramanik did not turn up for adducing evidence. The enquiry officer held the appellant guilty in respect of the charges mentioned in the chargesheet on the basis of the complaint lodged by said Shri Shibnath Pramanik without appreciating the fact that the complainant himself did not come forward to give evidence before the Enquiry Officer in order to prove the charges levelled against the appellant.

34. The disciplinary proceeding initiated against the appellant was vitiated due to the absence of the most vital witness namely, the complainant from whom demand of bribe was alleged.

35. In a disciplinary proceeding, charge of corruption/bribe should be proved beyond doubt and not on merely probabilities or hearsay evidence. In the facts of the present case, the disciplinary proceeding has vitiated due to the absence of the most vital witness namely, the complainant from whom the bribe was allegedly demanded by the appellant. In the case of Union of India & Ors. Vs. Gyan Chand Chattar, reported in (2009) 12 SCC 78, Hon"ble Supreme Court observed :-

21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty

awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

36. Absence of any evidence in support of a finding is to be considered by the court. In the case of State of Haryana & Anr. Vs. Rattan Singh (supra), the Hon''ble Supreme Court observed :-

.....Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record.....

37. Therefore, absence of the evidence of the complainant cannot be altogether ignored by the Court specially when no reason has been furnished to justify the absence of the complaint before the enquiry officer. The enquiry officer also did not furnish any reason.

38. In the case of G. M. Tank (supra), the Hon''ble Supreme Court observed :-

30.....The Investigating Officer Mr. V. B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed.....

39. We also take serious exception to the conduct of the Disciplinary Authority who, by an unreasoned order inflicted major punishment on the appellant herein and thereafter did not even hesitate to affirm his own order as the Appellate Authority while deciding the appeal of the appellant which clearly establishes the biased attitude of the Disciplinary Authority.

40. For the reasons discussed hereinabove, we are unable to uphold the findings of the Enquiry Officer as well as the punishment imposed by the Disciplinary Authority which was subsequently affirmed by the Appellate Authority. Accordingly, we quash the findings of the Enquiry Officer as well as the punishment imposed by the Disciplinary Authority and the subsequent order passed by the Appellate Authority affirming the decision of the Disciplinary Authority. The impugned judgment and order under appeal passed by the

learned Single Judge, therefore, cannot be sustained for the reasons discussed hereinabove and the same is accordingly set aside.

41. The respondent authorities are directed to reinstate the appellant in service forthwith and pay all admissible salary and allowances regularly. The respondents are also directed to treat the appellant in service although without any break as if no order of dismissal was ever issued to the said appellant. The appellant will also be entitled to receive full back wages for the period he was not paid the salary in view of the issuance of the order of dismissal which has been quashed by us in the instant appeal. We also direct the respondent authorities to calculate the back wages payable to the appellant in terms of this order within a period of four weeks from date and disburse the same to the said appellant immediately thereafter. With the aforesaid directions, this appeal stands allowed.

42. In the facts of the present case, there will be however no order as to costs.

43. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Mrinal Kanti Sinha, J.

I agree.

LATER :

After pronouncement of the judgment, Mr. Anirban Dutta, learned Advocate representing the respondents, prays for stay of the operation of the said judgment and order. The learned Advocate of the petitioner opposed the aforesaid prayer.

We find no reason to grant such stay.

Accordingly, the prayer for stay is refused.