
(1995) 03 CAL CK 0005
In the Calcutta High Court
Case No : C.O. No. 5594 (W) 1995

S. Briguram Roy	Vs	APPELLANT
Seventh Industrial Tribunal and Others		RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(2), 10(2A), 15, 33(2)

Citation : (1995) 2 CALLT 354 : (1996) 3 LLJ 835

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : K.L. Roy and Bandopadhyay, for the Appellant; Jatin Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Ruma Pal, J.—The only point raised in this writ petition is whether a Tribunal constituted under the Industrial Tribunal Act can refuse to proceed with the reference u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") on the ground that a SLP has been admitted in connection with the reference by the Supreme Court.

2. The facts which are relevant for the purpose of answering this question are as follows:--

The petitioner is a workman employed by the respondent No. 3. During the pendency of an industrial dispute before the Tribunal (hereinafter referred to as the "first dispute") the respondent No. 3 sought to dismiss the petitioner and did in fact so dismiss him. The respondent No. 3 accordingly applied for the approval of the Tribunal before which the first dispute was pending for approval of the action of dismissal of the petitioner u/s 33(2)(b) of the Act.

3. Subsequently the petitioner raised a fresh industrial dispute (hereinafter referred to as the second dispute). The second dispute was referred u/s 10 to the Industrial Tribunal for adjudication of the propriety of the petitioner's dismissal

from sen ice. A preliminary point was taken by the respondent authority before the Tribunal in the Second Dispute that the question of the propriety of the dismissal had already been gone into and decided in favour of the management at the time the approval was granted u/s 33(2)(b) in connection with the first dispute. The Tribunal negated this contention and held that the scope of enquiry u/s 33(2)(b) was distinct from the scope of the enquiry u/s 10 of the Industrial Disputes Act. 1947.

4. Being aggrieved by the order of the Tribunal the management, (the respondent No. 3) filed an application under Article 226 of the Constitution of India challenging the order by which the Tribunal had rejected the preliminary objection of the management. The writ application was dismissed by S.C. Sen. J. sitting singly. An appeal was preferred by the management from such dismissal. The appellate court referred the matter to a Special Bench for determination of the issue as there had been conflicting views expressed by different courts on the point. After considering all the authorities on the question, by a judgment dated September 17, 1987 the Special Bench decided the issue by holding that the proceeding u/s 33(2)(b) of the Act did not operate as res judicata in a subsequent proceeding u/s 10 of the Act whether such finding related to the propriety of the domestic enquiry of the misconduct of the workman. It went on to hold that res judicata may not also apply as there may not be identity of the parties in the two proceedings. This judgment covered four different matters which had been referred to the Special Bench for decision including the appeal of the respondent No. 3 General Electric Coy. of India Vs. Fifth Industrial Tribunal of West Bengal and Others, .

5. The management then filed an application by way of Special Leave before the Supreme Court. By an order dated July 24, 1989 the Supreme Court disposed of the application for admission as well as the application for grant of stay by the following order:

"Special Leave is granted. Stay rejected.""

In other words the Supreme Court was of the view that the consequences resultant upon the decision of the Special Bench would follow and were not to be stopped in any manner.

6. Presumably on this basis the matter came back before the Tribunal. Between of May 19, 1990 and of December 6, 1994 the Tribunal held as many as 55 sittings in the second dispute. However, on December 14, 1994 the Tribunal decided that it would not proceed in the matter any further because the matter was pending before the Supreme Court. The Tribunal said that since the issue was pending before the Supreme Court the Tribunal being subordinate to the Supreme Court could not in any way proceed with the case. It further held that if the Tribunal expressed its view this would tantamount to disposing of the matter lying before the Supreme Court for its decision. Accordingly the Tribunal decided not to proceed with the matter as long as the matter is pending before the

Supreme Court.

7. Challenging this order of the Tribunal the present writ application has been filed by the workman petitioner. Learned counsel for the petitioner said that the Supreme Court had categorically refused stay of the operation of the judgment and order of the Special Bench. It is said that there is a statutory obligation u/s 15 and Section 10(2A) of the Industrial Disputes Act 1947 not only for the Tribunal to complete the proceedings before him but to do so as expeditiously as possible. In refusing to exercise this jurisdiction the Tribunal has acted contrary to the provisions of law and in excess of the jurisdiction vested in it by law.

8. The learned counsel appearing on behalf of the respondent No. 3 has submitted that the writ application should not be entertained as this court was not sitting in appeal over the decision of the Tribunal. It is submitted that the court will not in its writ jurisdiction go into any matter which does not involve a jurisdictional error. It is said that there was no inherent lack of jurisdiction in the Tribunal to have passed an order. At the most it could be said that the Tribunal had passed an erroneous order. This, according to the learned Counsel for the respondent did not give scope for interference under Article 226 of the Constitution. It was also submitted that the prayers in the writ petition did not clearly specify the relief now being claimed by the petitioner workman and the grounds canvassed before the court had not been taken.

9. In my view the writ application must be allowed. The Order of the Supreme Court is clear and unequivocal. By rejecting the stay the judgment of the Special Bench remain fully operative. In refusing to proceed with the reference before it the Tribunal has in fact granted the stay to the management which was refused by the Supreme Court. The conduct of the Tribunal is inexplicable. Had the Tribunal been of the view that matter should not be proceeded with, it should not have done so from the very inception. It proceeded with the matter and virtually concluded it and then in a sudden volte face decided not to proceed with the matter any further. There can be no doubt that unless u/s 10(2A) and Section 15 where references, particularly relation to workmen are concerned, a duty has been cast upon the Tribunal to hold proceedings expeditiously and to submit the Award in terms thereof. The action on the part of the Tribunal apart from being contrary to the order of the Supreme Court is beyond the scope of the mandate cast upon the Tribunals under the provisions of the Act itself.

10. This is not a question of a mere erroneous exercise of jurisdiction, but a failure to exercise jurisdiction vested in the Tribunal by law. The first submission of the respondent is accordingly rejected.

11. As far as the objection relating to the prayer in the writ petition is concerned, the petitioner has very properly asked for quashing of the order dated December 14, 1994 and has also asked for a mandamus commanding the Tribunal to proceed in accordance with law. The prayers sufficiently pointed out the nature of the relief in fact claimed before this court.

12. There is also no substance that the grounds canvassed had not been taken. The grounds have been raised in the petition specifically.

13. For the reasons aforesaid I allow the writ application and I quash the order dated December 14, 1994 and I direct the Tribunal to complete the proceedings in accordance with law.

In the facts of the case there will be no order as to cost.

Stay of operation of the order prayed for is refused.