
(1990) 11 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 3156 of 1985

Statesman Ltd.

APPELLANT

Vs

Second Industrial Tribunal and Others

RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2A), 15(2), 17

Citation : 95 CWN 861 : (1991) 63 FLR 816 : (1993) 3 LLJ 192

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : P.P. Ginwala, for the Appellant; Parthasarathi Sengupta, for the Respondent

Judgement

Kalyanmoy Ganguli, J.—The petitioner, in the instant application under Article 226 of the Constitution of India, pray for a writ, inter alia, in the nature of certiorari requiring respondent 1 "to transmit and certify to this Hon'ble Court the record of the proceedings it had before it under Reference No. 2391 - I.R. I R/131-17/86, dated 29 October 1986, and its order made thereon being Order No. 10, dated 13 November 1987, to be in this Court dealt with in order that your petitioner may have the more sure and speedy justice and that the same may be set aside or quashed" and for a writ in the nature of mandamus commanding the respondents and each of them to forbear from enforcing or taking any step to enforce or giving any effect to the said pretended order.

2. Although the petitioners have prayed for quashing not only the Order No. 10, dated 13 November 1987, but also the order of reference, dated 29 October 1986, yet no argument was advanced on the question of the order of reference being bad in law. The entire argument was directed against the Order No. 10, dated 13 November 1987, allowing the application of respondent 2 workman u/s 15(2)(b) of the Industrial Disputes Act, 1947, hereinafter referred to as the 1947 Act.

3. The pleadings were lengthy and the arguments lengthier but the point is

rather short.

4. Respondent 2 at all material times, was a workman employed by the petitioner as an electrician in its Calcutta office. A show-cause notice was issued to respondent 2, a disciplinary proceedings ensued and the proceedings culminated in an order of dismissal of respondent 2 by the petitioner, dated 11 February 1985, which is annexed to the petition and marked with the letter "B"

5. Conciliation proceedings were initiated and the same having failed an industrial dispute was referred by the appropriate authority, to the Second Industrial Tribunal, West Bengal, under Order of Reference No. 2391/I.R./KI/131-17/86, 29 dated October 1986. The issue was as follows:

"Whether the termination of service of Sri Akhil Kr. Tarafdar is justified? What relief, if any, is he entitled to ?"

Although it has been stated in Para 6 of the petition that the order of reference has been annexed to the petition marked with the letter "D" yet I tried in vain to find the said annexure which is sadly missing in the petition.

6. The parties to the proceedings, namely, the petitioner and respondent 2, filed their respective written statements before the learned Tribunal.

7. Subsequently, on or about 25 May 1987, respondent 2 workman made an application before respondent 1 claiming interim relief under the provisions of Section 15(2)(b) of the 1947 Act as inserted by Section 7 of the Industrial Disputes (West Bengal Second Amendment) Act, 1980, hereinafter referred to as the West Bengal Act. The writ-petitioner filed an objection to the application of respondent 2 mainly on two points, viz.:

(i) that respondent 2 was not entitled to get any interim relief inasmuch as he was gainfully employed as an electrician in Eagle Lithography Company (Pvt.) Ltd. at 26-B, Chistopher Road, Calcutta, and in addition thereto carried on the business of running a workshop at his residence in partnership with his brother;

(ii) that in law also respondent 2 was not entitled to take the protection of Section 15(2)(b) of the 1947 Act as the said section had been rendered inoperative by Parliament with effect from 21 August 1984 by Section 10 of the Industrial Disputes (Amendment) Act, 1982, which received the assent of the President on 31 August 1982 but was brought into force by notification on 21 August 1984.

8. So far as the question of the factum of respondent 2 being gainfully employed elsewhere is concerned, the learned Tribunal, on an appreciation, of the evidence came to the finding that the writ-petitioner had failed to discharge its burden to prove that respondent 2 was so gainfully employed. The contention of the employer to the effect that the onus of proof shifted to respondent 2 (oral evidence) tendered by the employee of the writ-petitioner is not tenable. The evidence tendered by the writ-petitioner was rather vague and hearsay. The writ

Court not being a Court of appeal should not try to act as such and try to upset a finding of fact arrived at by the appropriate forum by substituting its own wisdom in the place and stead of the wisdom of the trying authority by reappreciating the evidence. This is simply not permissible. There being no apparent error of law in such finding or any palpable perversity by the learned Tribunal this writ Court should not seek to sit in appeal over the finding of the learned Tribunal.

9. Even if we assume that for part of the period in question, respondent 2, was in fact, gainfully employed elsewhere, that should not, by itself stand in the way of his getting the benefit u/s 15(2)(b). In this connection a reference may be made to the case of *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd.* and Anr. 1986 LIC 863 . In Para 24 of the said decision at page 1004 this aspect of the matter received the attention of the Hon"ble Judges of the Hon"ble Supreme Court and their Lordships were constrained to observe as follows :

"It was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate division and the hearing of this appeal and inquiry, therefore, should be directed to be made into the amounts received by them from such alternative employment so as to set off the amount so received against the back wages and future salary payable to them. It is difficult to see why these eighty-four workmen should be put to further harassment for the wrongful act of the company. It is possible that rather than starve while awaiting the final decision on their complaint some of these workmen may have taken alternative employment. The period which has elapsed, is, however, too short for the moneys received by such workmen from the alternative employment taken by them to aggregate to any sizeable amount, and it would be fair to let the workmen retain such amount by way of solatium for the shock of having their services terminated, the anxiety and agony caused thereby, and the endeavours, perhaps often fruitless, to find alternative employment."

10. In view of the aforesaid observation I am constrained to hold that even if respondent 2 had been in gainful employment during the interregnums between the date of dismissal and the date of the impugned order the Court should not be cruel enough to deprive the workman on that ground from obtaining the benefits conferred upon him otherwise under the provisions of Section 15(2)(b).

11. So far as the second point is concerned, viz. that respondent 2 was not entitled to take the benefits under the provisions of Section 15(2)(b) of the 1947 Act as introduced into the statute by the West Bengal Act of 1980, as the said section has been rendered inoperative by Parliament with effect from 21 August 1984 by Section 10 of the Industrial Disputes (Amendment) Act, 1982, which received the assent of the President on 31 August 1982 but was brought into force by notification on 21 August 1984 is concerned, brilliant arguments were made on behalf of both the sides.

12. Although the learned Tribunal relied on the case of Ganges Printing Ink Factory Employees Industrial Co-Operative Society Ltd. and Another Vs. The 7th Industrial Tribunal and Others, it is not necessary to refer to that case as I agree with the submission made by Sri Ginwala appearing on behalf of the petitioner that the said decision was given at a point of time when the 1982 Amendment effected by the Parliament in the 1947 Act did not come into force when the learned Tribunal in that matter passed its order. To be more precise the learned Tribunal in connection with that case passed its order on 7 November 1983, long before the coming into effect of the 1982 Amendment, which came into force on 21 August 1984. In that view of the matter the decision in the above Ganges Printing Ink Factory Employees' Industrial Co-operative Society Ltd. is not very material.

13. In support of the contention that Section 15(2)(b) as inserted by the 1980 Act of the said Legislature is rendered inoperative by the enactment of the 1982 Amendment Act enacted by the Parliament, the learned counsel for the petitioner embarked on a very lengthy argument pointing out the entire chronological metamorphosis of the Industrial Disputes Act in relation to Sections 10, 15 and 17 and tried to establish that from the sequence of the enactments it should be held that Section 15(2)(b) of the 1947 Act as introduced by the State Legislature is rendered inoperative. In support of such argument the learned counsel for the petitioner has referred to the case of State of Orissa Vs. M.A. Tulloch and Co., .

14. It is not necessary to go into the aforesaid decision as the same is a very celebrated one laying down the proposition that for invoking the mischief of Article 254 of the Constitution of India, it is not necessary that there should be some repugnancy, conflict or inconsistency between the State and the Central Legislature but even if the two provisions enacted by the State and the Central Legislature can operate side by side, Article 254 will still intervene and render the State Legislature nugatory, all that is needed under Article 254 to render the provisions of a State Legislature nugatory is that both the enactments should intend to occupy and operate in the same field. The question of repugnancy is not the only test. As stated earlier, a very salutary principle has been laid down in the aforesaid case and I respectfully agree with the same.

15. The question to be gone into in the instant case is whether Section 7 of the 1980 Act enacted by the State Legislature introducing Section 15(2)(b) occupies the same field occupied by the enactment of the Amendment Act, 1982, which came into force on 21 August, 1984 by the Parliament.

16. However, as elaborate arguments were made by the learned counsel appearing on behalf of both the parties on this aspect of the matter I shall fail in my duties if I do not at least refer to the said argument in brief.

17. Section 15 of the Act as it stood before its amendment by the West Bengal Legislature by the 1980 Act read as follows:

"15 Duties of Labour Courts, Tribunals and National Tribunals - Where an

industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication it shall hold its proceedings expeditiously and shall, as soon as it is practicable on the conclusion thereof, submit its award to the appropriate Government."

18. Section 7 of the 1980 Act amended Section 15 by providing as follows:

"7. Amendment of Section 15(1) Section 15 of the principal Act shall be renumbered as Sub-section (1) of that section and in Sub-section (1) as so renumbered, the words "a Labour Court, Tribunal or" shall be omitted.

(2) After Sub-section (1) as so renumbered the following sub-section shall be inserted:

"(2) Where an industrial dispute has been referred to a Labour Court or Tribunal, it shall-

(a) after filing of statements and taking of evidence, give day- to-day hearing and give its award, other determination or decision in the manner specified in Section 17B without any delay:

(b) upon hearing the parties to the dispute determine, within a period of sixty days, from the date of reference under Sub-section (1) of Section 10 or within such shorter period as may be specified in the order of reference under Sub-section (1) of Section 10 the quantum of interim relief admissible. If any:

Provided that the quantum of interim relief relating to discharge, dismissal, retrenchment or termination of service of workmen shall be equivalent to subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969 (Act 38 of 1969)."

19. Thereafter Section 15 of the 1947 Act was further amended by the Central Legislature by Section 10 of the Act (46 of 1982) to the following effect:

"15. Duties of Labour Courts, Tribunals and National Tribunals - Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to Sub-section (2A) of Section 10 submit its award to the appropriate Government."

20. We have already seen that the aforesaid amendment was brought into force by notification on 21 August 1984.

21. Section 10(2A) of the Act which was inserted by Section 8 of Act 46 of 1982 was also brought into force on the same day, namely 21 August 1984 and reads as follows:

"(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute

to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall, exceed three months.

Provided further that where the parties to an industrial dispute apply in the prescribed manner whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the Presiding Officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may, for reasons to be recorded in writing, extend such period as he may think fit :

Provided also that in computing any period specified in this sub-section, the period if any for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed."

22. Sri Ginwala also referred to Section 17B of the Act relating to payment of full wages to workmen pending proceeding in higher Court. In my opinion the reference to the aforesaid section is wholly irrelevant and immaterial as the said section deals with some benefits to be given to a workman during the "post award" stage. We, in the instant case, have nothing to do with the "post award" stage but at the stage when the proceeding is pending before the Tribunal itself.

23. Sri Ginwala also referred to various other amendments engrafted into the 1947 Act both by the State Legislature and the Parliament and from that wanted to establish that the Central Legislature wanted to occupy the field which was till then occupied by the State Legislature in the matter of giving relief to a workman during the pendency of an adjudication.

24. Before proceeding further we should remind ourselves that one of the main objects and purpose of the said 1947 Act is not only to arrange for speedy resolution of industrial adjudication for the purpose of bringing peace and amity in the industry but also to ameliorate the conditions of the workmen who were, previous to such enactment, exposed to the vagaries of their employers. This Act conferred various rights on the workmen to agitate their grievances against their employers before the industrial forum. This is one of the most important pieces of social legislation and has to be interpreted keeping in mind the welfare of the workmen.

25. The learned counsel for the parties, as I have already observed, advanced brilliant and erudite arguments in support of their respective contentions. In this connection I cannot resist the temptation to refer to a passage in the case of *The Seksaria Cotton Mills Ltd. Vs. The State of Bombay*, . In the aforesaid judgment the Hon^{ble} Justice Sri Vivian Bose was pleased to observe, inter alia that:

"It is not till one is learned in the law that subtleties of thought and bewilderment arise as the meaning of plain English words which any ordinary man of average intelligence, not versed in the law, would have no difficulty in understanding. In a penal statute of this kind, it is our duty to interpret words of ambiguous meaning in a broad and liberal sense so that they will not become traps for honest, unlearned (in law) and unwary men. If there is honest and substantial compliance with an array of puzzling directions that should be enough even if on some hypercritical view of the law other ingenious meaning can be devised"

26. It was sought to be strenuously contended by the learned counsel appearing for the petitioner that both the State Amendment in engrafting Section 15(2)(b) into the body of the 1947 Act and Section 15(1) as engrafted by Section 10 of Act (46 of 1982) by the Parliament intend to alleviate the hardship caused to workmen by the prolonged pendency of an industrial adjudication before the Tribunal. In that sense, the learned counsel for the petitioner emphasised that both the Central Amendment and the State Amendment took to occupy the same field and as such the State Amendment is rendered inoperative by the subsequent Central Amendment within the meaning of proviso to Clause (ii) of Article 254 of the Constitution of India.

27. Quoting the passage from *The Seksaria Cotton Mills Ltd. Vs. The State of Bombay*, I am tempted to confess that I am not learned enough in law to be puzzled in the construction of simple sentences in English. To me the Central Amendment limits the time within which an award should be published or the industrial adjudication should come to an end. Even the Central Amendment does not lay down any inflexible rule that an industrial adjudication must, in any case, has to be concluded within the time specified but on the contrary it not only postulates extension of time but also categorically provides that an industrial adjudication is not to be rendered nugatory simply because the time schedule prescribed could not be adhered to. Section 15(2)(b) proceeds on the basis that whatever the length of time taken by the particular industrial forum to finalise and complete the adjudication, during the pendency of such adjudication the workman is not starved to death. The object behind the Central Amendment is to shorten the agony, the object behind the State Amendment is to provide sustenance and nourishment to enable the workman to back up his cause before the industrial forum. By no stretch of imagination, that is to my limited imagination of course, the two provisions can be said to occupy the same field.

28. In view of what I have discussed above it is not necessary for me to refer to the other cases cited at the Bar, it is not also necessary for me to enter into an intellectual debate and to preach sermons when stomachs are churning.

29. For reasons stated above I am constrained to hold that Section 15(2)(b) of the 1947 Act as inserted by the West Bengal State Legislature is not rendered inoperative by the subsequent amendment made by the Central Legislature in Section 10(2A) and 17 of the parent Act.

30. For the reasons stated above both the contentions of the petitioner fail. Also for the reasons stated above, it is not necessary to go into the question of the subsequent amendment made in Section 15 by the State Legislature which also came into force on 21 August 1984.

31. In the circumstances, the application fails. This rule also fails and is discharged. As the matter is a long standing one the case should go back to the learned Tribunal forthwith and the learned Tribunal be directed to take up hearing of the case on a day-to-day basis without allowing any adjournment except under compelling circumstances. It is also desired that the adjudication be completed as expeditiously as possible preferably within three months from the date of communication of this order.

32. There will, however, be no order as to costs.

33. All parties to act on a xeroxed copy of the operative part of this judgment signed by the officer of the Court on the undertaking that the parties will apply for and obtain certified copy.