

(1999) 03 CAL CK 0033

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, M.A.T. No. 1049 of 1998

The Workmen represented by the Ananda Bazar Group of
Publication Employees Union

APPELLANT

Vs

Ananda Bazar Patrika Limited and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 101, 61, 65, 67
Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1999) 2 CALLT 170 : (1999) LabIC 3796 : (1999) 2 LLJ 899

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : Mr. Ajit Chandra Chattopadhyay, Mr. Aditya Naskar and Mr. Nayan Rakshit, for the Appellant; Mr. Dr. Monotosh Mukherjee and Mr. Amaresh Chakaborty, for the Respondent

Judgement

S.B. Sinha, J.—In this appeal, the appellant has questioned a judgment and order dated 10.9.97, passed by a learned single Judge of this court whereby and whereunder the writ application filed by the respondent Nos. 1 and 2 herein questioning an order dated 17.7.97 passed by the 5th industrial Tribunal, West Bengal in Case No. VIII-143/89, was set aside.

2, The basic fact of the matter is not in dispute.

A reference dated 9.5.89 was made by the State of West Bengal, being the appropriate Government in terms of section 10(1) of the industrial Disputes Act, in relation to the following issues:

1. Wages for the period from 26.4.84 to 4.7.84.
2. Shift ditty for despatch section workmen.
3. Salary for 5.7.84

4. Encashable earned leave for 1985.

The parties, after the said reference had been made, filed their respective written statements. Allegedly, the workmen had been relying upon the documents beyond their pleadings. An objection was raised by the respondent No. 1 herein and by an order dated 12.10.93 the said objection had been overruled. Prior thereto, the workmen intended to file an additional written statement. No leave was granted therefore. The respondent No. 1 questioned the said order dated 12.10.93 by filing a writ application before this court, which was marked as C.O. 1706 (W) of 1994. The matter was considered by Shyamal Kumar Sen. J, and his Lordship after hearing the learned counsel for the Parties at the motion stage itself by an order dated 26.6.95 directed:

"Order No. 47 dated 12.10.93 passed by the Judge, Second industrial Tribunal need not be interfered with. It is however, made clear that in the event the petitioner raises objection to the relevancy and also with regard to the admissibility of such documents, the Tribunal will decide the same in accordance with law before admitting such documents and before making them exhibits. It will also be open to the respondent workmen to make such submission with regard to relevancy and also with regard to the admissibility as the said respondent may be advised."

3. It is, however, placed on record that the workmen had produced a number of documents before the learned Tribunal with its leave. The said documents having being proved, most of them had been marked without any objection. However, in relation to certain documents objection had been taken as regards their admissibility on the ground that the same were beyond the pleadings of the workman. By reason of the order dated 17.7.97 the learned Tribunal observed :

"This chapter was performed intermittently after the Union started to adduce evidence by It witness, Sri Deben Ganguly on 13.5.93, in part and so the matter was fixed for further evidence by P.W.I and accordingly, further evidence of P.W.I has been recorded on 14.3.96 in part and 13.1.97 in part in presence of both learned Advocates of both sides. On 14.3.96 the said witness, P.W.I produced as many as 20 documents as per their said list, dated 2.3.93 and marked them Exhibits by this Tribunal, as no objection was raised by the company in regard to relevancy or irrelevancy of these documents. But while on recording evidence on 13.1.97, the objection raised with regard to that by the company and ultimately the instant petition came up for hearing."

4. Before the learned Tribunal, reliance had been placed on a decision of the apex court in Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, , for the proposition that in absence of pleading, no evidence is admissible in evidence. The learned Tribunal considered the order passed by Sen, J. as also the reference made by the appropriate Government. It thereafter held:

"It is also settled law that no evidence could be produced by the parties in the absence of pleadings, as the object and purpose of pleading is to enable the

adversary party to know the case it has to meet. Keeping in mind with regard to the above position as well as the submission of the learned Advocate for the Union as urged by him before this Tribunal that they want to use these very documents only to refute the contention of the company as made in their pleadings and have a fair trial for adjudicating the dispute and/or issues under reference, the union is allowed to use the rest documents as mentioned in their list dated 2.8.93. The company is given liberty to mention at the time of argument and passing the award with regard to the document or documents now marked as Exhibits, which may create a new fact or facts beyond the pleading of the union as made out in their written statement."

5. Questioning the validity of the said order, the respondent Nos. 1 and 2 herein filed the writ application. By reason of the Impugned Judgment, the learned trial Judge referring to the provisions of sections 61 and 65 of the Indian Evidence Act, held that the learned Tribunal below could not have passed an order contrary to or inconsistent with the order dated 26.6.95 passed by , Sen, J, in C.O. No. 170G(W) of 1994. It was, therefore, directed :

Tills court, accordingly, directs the tribunal to expedite the process by marking the documents sought to be relied upon by the parties as expeditiously as possible in terms of the relevant provisions as enumerated in Chapter V from sections 61-67 of the Evidence Act. After determination the question about the relevancy and admissibility in terms of the aforesaid sections of the Evidence Act they are required to be marked as exhibits and the tribunal shall expeditiously proceed with the pending matter as early as possible and It should pronounce a reasoned award after completion of formalities. Accordingly, a writ of prohibition is issued restraining the concerned respondents from giving effect to the impugned order and as such, an order of permanent injunction is also passed to the similar effect and in terms of issuance of a writ of certiorari the Impugned order being order No. 90 dated 17.7.97 passed by the 5th industrial Tribunal in case No. 8 149 of 1989 is hereby set aside, subject to above directions. The writ petition thus, stands allowed to the extent as indicated above."

6. Mr. Chattopadhyay, learned counsel appearing on behalf of the appellant. inter alia, submitted that It is a well settled principles of law that the provisions of the Evidence Act, are not applicable either in a domestic proceeding or in a proceeding under the industrial Disputes Act. in support of the aforementioned contention, reliance has been placed on *Syndicate Bank v. B.S.Narayan*, reported lit 1999 (81) FLR 250, 1981(22) FLR 243, *Balkrisna Mtsra v. Presiding Officer, C.G.I. Tribunal, Orissa*, reported in 1977 (35) FLR 11, *Food Corporation of India Workers Union v. Food Corporation of India*, reported in 1996 SCC (L & S) 1255, *Dr. Jnanendra Nath Das v. State of Orissa*, reported in 1965 (1) LLJ 173 and *State of Haryana v. Ratan Singh*, reported in 1977 (34} FLR 264. According to the learned counsel, the question as to whether a document is admissible in evidence, or not, must have to be judged on the basis of terms of reference as the technicalities of the CPC or the Evidence Act, are not applicable in an

industrial adjudication.

7. In *Lord Krishna Textile Mills v. Its Workmen*, reported in Supreme Court Labour Judgments (1950-1983) Vol.8. 591, the apex court stated :

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts."

8. Dr. Monotosh Mukherjee, learned counsel appearing on behalf of the respondent Nos. 1 and 2 herein did not dispute the aforementioned proposition but submitted that the principles laid down in the Evidence Act are attracted. Learned counsel submitted that the respondent Tribunal being bound by the order passed by Sen, J. in the earlier writ application, could not have acted contrary thereto or inconsistent therewith. According to the learned counsel, it is the duty of the Tribunal to act on the basis of the materials legally brought on records and it cannot act as a benevolent despot. Strong reliance in this connection has been placed on *J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur*, According to the learned counsel, although the provisions of the Evidence Act are as such not applicable it will appear from the decisions of this court in *Ramendra Narayan Deb v. 8th industrial Tribunal*, reported in 1975 Lab. 1C 94 and *The Ganges Manii/acturfng Company & Ors. v. State oJW.B. & Ors.*, reported in 1995 (2) CLJ 196, that the learned Judges had referred to the provisions of the Evidence Act for the purpose of arriving at a decision as to upon whom the burden of proof lay.

9. A bare perusal of the order dated 17.7.97 passed by the respondent Tribunal, it would appear that an application was filed by the respondent No. 1 herein on 2.3.97 stating, inter alia, that the Union should not be allowed to adduce any evidence on the basis of the documents, the relevancy of which had not been established on the basis of pleading contained in its written statement and further they should not be allowed to resort to the move of proving the relevancy of documents submitted by it under list dated 2.8.93 with reference to the documents filed by the company to support its pleading contained in its written statement. It was the further allegation of the respondent No. 1 that those documents submitted by the Union under list dated 2.8.93 should not be treated as relevant and material as there is no pleading at all with regard to the facts disclosed in the said documents and thus the union cannot be permitted to use the same. On the other hand, the case of the appellant herein was that they had produced the said documents as per their list dated 2.8.93 so as to rebut the evidence adduced on behalf of the respondent No. 1 herein. It had further been pointed out that a special leave had already been granted by the Tribunal for filing the documents and at that point of time the relevancy thereof had been explained.

10. It is now a well settled principles of law that in a departmental proceeding or in an industrial adjudication, provisions of the Evidence Act are not applicable.

Although the decisions are legion, suffice it to say, that in *Food Corporation of India Workers' Union v. Food Corporation of India*, reported in 1996 SCC 1255, the apex court has clearly held :

"The Judgment of this court in *Food Corpn. of India* case is conclusive to show that 464 persons attached to "the list" are workmen of the Corporation entitled to the benefit given by the judgment. The only further question that fell for consideration as a result of the later order of remit in CA No. 155 of 1990 was "the Identity of 464 workmen" and not whether they or any of them, had been in employment at the relevant time. On a perusal of the order of the Tribunal we are inclined to hold that the Tribunal wholly misconceived the nature of the orders passed by this court in *Food Corpn. of India* case and CA No. 155 of 1990 and in conducting a fresh appraisal as to whether all or any of the "464" workmen included in the list were in employment of the Corporation at the relevant time. The approach made by the Tribunal, even in the matter of marshalling or considering the material placed before it, seems to be wrong for the following reasons. The Tribunal was apparently of the view, that there should be "Evidence" to prove the facts, as per the provisions of the Evidence Act. It is not so. The Tribunal is not a court. There should be only "material" and not evidence as required by the Evidence Act. It appears that a good many witnesses were examined by another member who was the predecessor of the member, who delivered the final award. The Tribunal has stated that the evidence of the petitioner (workman) is not "duly proved", "legally proved" or proved "beyond reasonable doubt". This approach was also wrong. The only question was whether on weighing the probabilities, the material placed by the petitioner was acceptable or rendered probable."

11. The learned trial Judge, therefore, in our considered view, was not correct to the effect that the order of the Tribunal required interference by this court in exercise of its Jurisdiction under Article 226 of the Constitution of India. In our considered opinion, the learned trial Judge appears to have proceeded on the basis that the provisions of the Evidence Act are applicable. They evidently are not. The question as to whether the documents are admissible in evidence or not depends on many factors. As for example, in a case where a document has been admitted in evidence without any objection whatsoever, the party at a later stage can not question the admissibility thereof, unless the same was inherently inadmissible in evidence. Furthermore, in an industrial adjudication, as the provisions of the Indian Evidence Act as also the CPC are not applicable, a Tribunal in a given case, may consider the materials brought on records by the parties for the purpose of settling the disputes referred to it by the appropriate Government in exercise of Its Jurisdiction u/s 10(1) read with section 12(5) of the Industrial Disputes Act. Furthermore, even in a civil suit, the High Court shall not even interfere with such an order in exercise of its revisional jurisdiction. By reason of the order impugned in the writ application, the Tribunal had not decided the rights of the parties. A writ application is maintainable against an order of the Tribunal provided thereby the rights of the parties had been decided.

Unfortunately, the learned trial Judge failed to apply his mind in so far as this aspect of the matter is concerned. It is further well settled that this court will not exercise Its jurisdiction under Article 226 of the Constitution of India against orders passed by the industrial Tribunal deciding preliminary issues, as thereby the purpose of getting the industrial dispute resolved by the Tribunal without any delay may become frustrated. We, therefore, are of the opinion that the writ petition filed by the writ petitioners ought not to have been entertained at all at this stage. It is evident that the respondent No. 1 herein is filing writ application after writ application raising a question which could have been raised if an award had been passed against It. In fact, as had been noticed hereinbefore, the Tribunal below had all along stated that the objection as regards admissibility of evidence would be taken for consideration at the final hearing. In his order, Sen, J. has merely made certain observations. The learned Judge did not issue any direction. Even If such directions had been issued, the same were not final in nature. With a view to consider the relevancy thereof, the learned Tribunal below could have arrived at a finding that such objection, if any, may be considered at the time of final hearing. No illegality thus has been committed by the learned Tribunal below.

12. The decisions cited by Dr. Mukherjee in our considered opinion, are not applicable in the facts of the present case. In J.K. Iron & Steel Co. Ltd. (supra), the apex court, in the peculiar facts situation of the case, held that the Adjudicator and the Labour Appellate Tribunal had adopted the attitude of benevolent despots and had based their conclusions on irrelevant considerations ignoring the real questions that arose, for decision and the issues that arose out of the pleadings of the parties. Such a stage had not reached in the instant case. In Ramendra Narayan Deb, (supra) a Division Bench of this court had referred to the provisions of section 101 of the Indian Evidence Act without deciding the question as to whether the said provisions would be applicable, or not. On the contrary, It has been held; Evidence Act does not apply to the industrial adjudication, but even so the principle of law on the burden of proof and onus of proof is a basic principle of law which the industrial Tribunals are also required to follow. Such is not the position here. Yet again, without referring to any other decisions as regards applicability of the Evidence Act, a learned single Judge of this court in The Ganges Manufacturing Company Ltd. (supra), had referred to section 101 of the Evidence Act. For the self-same reasons, the said judgment is also not applicable in the instant case.

13. For the reasons aforementioned, we are of the view that the judgment of the learned trial Judge cannot be sustained. It is set aside accordingly. The appeal is, therefore, allowed with costs. Counsel's fee quantified at 200 G.M.S. The Tribunal below is requested, keeping in view the fact that the reference is pending since 1989, to pass an award as early as possible.

S.N. Bhattacharjee, J.

14. I agree.

15. Appeal allowed