
(2007) 08 CAL CK 0088
In the Calcutta High Court
Case No : M.A.T. No. 2389 of 2007

Trinath Biswas

APPELLANT

Vs

Raiganj Flour Mills Private Limited and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561A

Citation : (2007) 3 CALLT 315 : (2007) 4 CHN 531

Hon'ble Judges : S.S. Nijjar, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : Sardar Amjad Ali, K.S. Ahmed and Manas Kumar Das, for the Appellant; L.C. Bihani and N.C. Bihani, Pradyot Kumar Datta and Amar Mitra, for the Respondent

Judgement

S.S. Nijjar, C.J.—The petitioner at the relevant time when the order was passed by the learned Single Judge, i.e. 6th November, 2006 was posted as Deputy Chief Electrical Inspector. He was required to take necessary steps in strict compliance with the orders passed by the learned Single Judge on 26th April, 1996 in CO. 5264 (W) of 1994. The direction was as follows:

The West Bengal State Electricity Board shall comply with award and from the money received by it from the Chief Electrical Inspector adjust the amounts due to it in terms of the award and refund the balance, if any to the writ petitioner and in the event there is any shortfall the writ petitioner shall make payment upon notice to be issued by the West Bengal State Electricity Board within period of four weeks from the date of service of such notice.

It was contended on behalf of the writ petitioner there is dispute regarding the period to which the terms of the second Clause of the award made and published by the Chief Electrical Inspector should apply. In my view the said Clause shall have to be read in the context of the reference that was made to the Chief Electrical Inspector that is to say the period between August, 1990 onwards to September, 1991.

2. This order was subsequently affirmed by the Division Bench. Instead of complying with the aforesaid direction, the Deputy Chief Electrical Inspector in the impugned order dated 17th September, 2005 observed as under:

From the documents it is found that neither the Hon"ble High Court nor the Id. Electrical Inspector has mentioned the period of dispute.

So, it is not possible to me to calculate the amount for the adjustment as directed by the Hon"ble High Court.

3. This order was challenged by the petitioner in Writ Petition No. 22450 (W) of 2006. The writ petition was allowed by the learned Single Judge by order dated 6th November, 2006. The Chief Electrical Inspector, West Bengal was directed to take appropriate decision in the matter strictly in compliance with the earlier order passed by this Court on 26th April, 1996 in CO. No. 5264 (W) of 1994 without any further delay. The Deputy Chief Electrical Inspector was also directed to take appropriate decision in resolving the dispute for the period prior to August, 1990 in terms of the order of this Court dated 26th April, 1996. Thereafter, even the amount of the interest accrued on the amount deposited by the petitioner was also to be disbursed. The order passed by the Deputy Chief Electrical Inspector on 17th September, 2005 was quashed and set aside.

4. This appeal has been filed by the Deputy Chief Electrical Inspector on the ground that certain adverse remarks have been made against him in the judgment dated 6th November, 2006 which would reflect adversely on the career prospect of the petitioner within the Board. The petitioner is aggrieved by the following observation:

The aforesaid observations and/or findings of the Deputy Chief Electrical Inspector, West Bengal are very much unfortunate and I am convinced that the said Deputy Chief Electrical Inspector, West Bengal could not take appropriate decision in the matter pursuant to the earlier direction of this Court due to his inefficiency and incompetency.

5. Mr. Ali, submits that the aforesaid observations have been made in the absence of the petitioner. The petitioner was not heard. The Rules of natural justice were not observed. On the basis of the aforesaid observations of the learned Single Judge, the petitioner has been transferred from the position of responsibility which had been held by him. The aforesaid comments would also reflect on the future career prospect of the appellant adversely. He, therefore, submits that the aforesaid observations be expunged from the judgment dated 06.11.2006.

6. We have considered the submissions made by the learned Counsel. We have also perused the paper book.

7. It is a settled proposition of law that any order causing adverse civil consequences cannot be passed against a public servant without observing the rules of natural justice. This rule of law is not only applicable to a quasi-judicial

authority but is equally applicable in judicial proceedings. This view of ours will find support from the judgment of the Supreme Court in the case of *The State of Uttar Pradesh Vs. Mohammad Naim*, . In this case it has been observed as follows:

The last question is, is the present case a case of an exceptional nature in which the learned Judge should have exercised his inherent jurisdiction u/s 561A Cr. PC in respect of the observations complained of by the State Government? If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of Law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

8. The aforesaid observations are reiteration of the law laid down by the Supreme Court in the case *Ishwari Prasad Mishra Vs. Mohammad Isa*, . In this case it has been held:

The knowledge that another view is possible on the evidence adduced in a case, acts as a sobering factor and leads to the use of temperate language in recording judicial conclusions. Judicial approach in such cases should always be based on the consciousness that one may make a mistake; that is why the use of unduly strong words in expressing conclusions or the adoption of unduly strong, intemperate, or extravagant criticism, against contrary view, which are often founded on a sense of infallibility should always be avoided. The use of such intemperate language may, in some cases, tend to show either a lack of experience in judicial matters or an absence of judicial poise and balance. No doubt, if it is shown that the decision of the trial Court in a given case is a result of a corrupt motive, the High Court must condemn it and must take due further steps in the matter. But the use of strong language and imputation of corrupt motives should not be made light-heartedly because the Judge against whom the imputations are made has no remedy in law to vindicate his position.

What we have said about the extravagant criticism made by the High Court against the Trial Judge needs to be repeated in respect of similar criticism made

by the High Court against some of the witnesses examined in the case.

9. The tests laid down in the case of Mohd. Nairn (*supra*) have been reiterated in the case of Dr. Dilip Kumar Deka and Another Vs. State of Assam and Another, . In the aforesaid case it has been observed as follows:

7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.

10. True it is that the Deputy Chief Electrical Inspector in his order dated 17th September, 2005 had been rather impolite in expressing his inability to comply with the order of this Court dated 26th April, 1996. But Judges are not expected to be either rude or impolite, even in the face of gravest of provocation. Adverse remarks against a person can only be made if there is material on the record to warrant such adverse remarks. It should also be necessary to record the adverse remarks for the just decision of the case. Even then before recording such remarks, the person or authority likely to be affected, ought to be heard.

11. Since in this case the adverse observations of "inefficiency and incompetency" have been made without hearing the petitioner and they would tend to have an adverse effect on his career prospect, the same are not sustainable. We, therefore, direct that the aforesaid observations shall be expunged from the order of the learned Single Judge. We may notice at this stage the submissions made by the learned Counsel for the petitioner as it is of some relevance. He has submitted that in the application for condonation of delay, the appellant had made certain averments with regard to the non communication of the order by the petitioner. Counsel submitted that these averments are emphatically denied as the order had been duly communicated. We have considered the aforesaid submissions. We are of the opinion that even if one ignores the averments made against the petitioner, the application for condonation of delay would still have to allowed in the interest of justice. We, therefore, allow the application for condonation of delay and condone the delay in filing the appeal.

12. Learned Counsel for the petitioner further submitted that even till date in spite of the order of the learned Single Judge having been affirmed by the Division Bench and subsequently affirmed by this Court by order dated 6th November, 2006, the refund has not been made to the petitioner even till date. The amount has not been disbursed. The next date of hearing of the dispute is kept in September, 2007. This submission of the learned Counsel for the

petitioner would rather tend to support the case put forward by the appellant that the delay in dealing with the matter was not intentional. Even the subsequent authority has not been able to determine the amount due to the petitioner till date. This, however, will not detract from the validity of the submission made by the learned Counsel for the petitioner that the entire amount which has been due to the consumers since 26th April, 1996 has not been paid till date. We direct the Electricity Board to take a decision on the claim of the petitioner on the next date, which is fixed for hearing of the petitioner.

13. The appellant is, however, at liberty to challenge in separate proceeding any administrative orders which may have been passed against the petitioner on the basis of the observations made by the learned Single Judge in the judgment dated 6th November, 2006 which have been expunged in this appeal.

14. With the above observations, the appeal is partly allowed treating the same as on day's list. The application for stay is disposed of.

15. Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties.

Tapen Sen, J.

16. I agree.