
(1997) 02 CAL CK 0018
In the Calcutta High Court
Case No : F.M.A.T. No. 3711 of 1996

Webel Nicco Electronics Limited

APPELLANT

Vs

Mrs. Anima Roy

RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 15(2)

Citation : (1997) 1 CALLT 243 : (1997) 1 CHN 454 : (1998) 2 ILR (Cal) 103 : (1997) 2 LLJ 80

Hon'ble Judges : Ruma Pal, J;Devendra Kumar Jain, J

Bench : Division Bench

Advocate : Dipak Kumar Ghosh, for the Appellant;Sanjay Bhattacharjee and Manik Ch. Ghosh, for the Respondent

Judgement

Ruma Pal. J.

1. The issue before this Court is whether a Tribunal can refuse to dispose of an application for interim relief u/s 15(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) until the workman files the written statement.

2. Before considering the issues, I must say that I am baffled by the reluctance shown in this case by the workman to file a written statement, Ordinarily the delay in disposing of an Industrial Dispute is attributed to the employer who would be interested in defeating the outcome of the dispute by exhausting the workman. In this case admittedly the workman was served with the charge sheet on June 29, 1991. The charges are serious ones. The domestic enquiry was held between July 10, 1991 to October 5, 1993. The Enquiry Officer found the workman guilty. On November 16, 1993 the employee was dismissed. According to the employer this was done on a consideration of the report of the Enquiry Officer, records, documents, and the gravity of the misconduct committed. A dispute was raised by the workman. The Government of West Bengal referred the following issue for adjudication to the Tribunal:

"Whether the dismissal of Smt. Anima Roy by the management is justified? What relief if any is she entitled to?"

3. Notices were issued by the Tribunal on June 23, 1995 fixing July 25, 1995 for appearance by the parties. On July 25, 1995 the parties appeared and the workman was directed to file her written statement by August 25, 1995. She has not filed her written statement till today. She did however file an application for interim relief.

4. It was in this background that the Tribunal passed the following order:

"Today is fixed for hearing of the interim relief. Today is fixed for filing of the written statement by the workman along with list of documents.

Both parties are present. The workman has not filed any written statement. The learned lawyer for the workman pressed for hearing of the interim relief petition.

Heard the submission of both sides. I have also gone through the interim relief petition filed by the workman and the written objection filed by the company. It appears to me that the interim relief is in the aid of final relief and as such it will be very much necessary to go through the prima facie case of both sides.

I therefore direct the workman to file written statement first thereafter the interim relief petition will be taken up for hearing.

To April 25, 1996 for written statement along with list of documents by the workman."

5. On July 23, 1996 the workman moved an application under Article 226 challenging the order dated March 29, 1996. The application was disposed of on the same date by the order under appeal by holding that the Tribunal was not required to consider whether the workman had a strong prima facie case in disposing of an application for interim relief and as such the filing of the written statement by the workman was not a sine qua non for disposal of an application for interim relief. The Tribunal was accordingly directed to dispose of the application for interim relief first without insisting upon the filing of a written statement by the workman. Subsequent to this order the matter was listed before the Tribunal. It was submitted by the workman that no evidence whatsoever would be adduced on the point of interim relief. The employer then filed this appeal. The delay in preferring the appeal was condoned by this court.

6. The employer has submitted that where a workman does not file a written statement for a period of one and a half years, as in this case, the workman could not insist upon the Tribunal disposing of an application for interim relief without filing a written statement. According to the appellant it was obligatory for the workman to file written statement before the hearing of the interim relief application. The submission is that without filing of the written statement it would not be possible for the Tribunal to determine the question whether the workman was entitled to any interim relief at all. According to the appellant

unless a written statement is filed the Tribunal could not prima facie reach a conclusion as to the allowability of interim relief. The appellant has relied on several decisions in support of its submission namely: The Management of Bihar State Electricity Board v. The Workmen of Bihar State Electricity Board and Ors. (1971 I LLJ 389)(Pat); Management of Bihar Khadi Gramodyog Sangh v. State of Bihar 1977 Lab IC 466; M.K. Azad and Anr. v. Government of Andhra Pradesh and Ors. 1983(3) SLR 747; and Delhi State Co- operative Bank Limited v. R.C. Yaduvanshi 1988 [56] FLR (13).

7. The workman on the other hand submitted that the filing of a written statement was not essential for disposing of the question of interim relief u/s 15(2)(b). It is submitted that while disposing of an application u/s 15(2)(b) it was not necessary for the Tribunal to come to any finding, prima facie or otherwise, as to whether the worker would be entitled to the ultimate relief in the main dispute. It has been argued by the workman that this follows from an analysis of the provisions of Section 15(2)(b) and was also settled by judicial precedent *Sm. Latika Ghosh Vs. Nirmal Kumar Ghosh*, ; *Smt. Anjula Vs. Milan Kumar*, ; *Ganges Printing Ink Factory Employees Industrial Co-operative Society Limited and Anr. v. The 7th Industrial Tribunal and Ors.*, 91 CWN 480; and *Vishan Roy Vs. Bayer (India) Ltd.*,

8. The question whether the Tribunal can insist on the filing of a written statement as a pre condition to hearing an application for interim relief involves the broader question as to what are the factors to be considered by the Tribunal, Labour Court, etc. under the Act for granting interim relief.

9. The word "interim" according to the dictionary meaning means "a temporary or provisional arrangement" (Shorter Oxford Dictionary, 1993 Edition). It has also been defined in Black's Law Dictionary (5th Edition) as "in the meantime; meanwhile; temporary; between". In fact, the word has been used interchangeably with the word interlocutory which also means provisional or temporary or not final. The nature of interim relief has been judicially determined, as far as this Country is concerned, as a relief which can be granted only in aid of and as an ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding so that if the final relief cannot be granted in terms as prayed for, the interim relief in the same terms cannot be granted. Conversely, if the claim is plausible the applicant should be granted some relief without having to suffer unreasonably for the law's delays. (See *The State of Orissa Vs. Madan Gopal Rungta*, ; *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*,

10. Thus interim relief is by definition prayed for at the commencement of the proceedings or at least before the conclusion of the main proceeding. It would be temporary in nature and would continue until and be subject to the final determination of the dispute or the lis. Generally, at that stage the Court cannot determine whether ultimately the final relief will be granted. It is for this reason that Courts have laid down two broad guidelines for the grant of temporary

reliefs namely; (a) the prima facie case of the applicant; and (b) the balance of convenience.

11. The question whether a Labour Court or a Tribunal under the Industrial Disputes Act, 1947 has the power to grant interim relief came up for consideration in the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*. The Supreme Court construed the provisions of Section 10(4) of the Act and came to the conclusion that the provisions of that sub-section allowed the Tribunal to adjudicate not only points referred but "matters incidental thereto" and that this was the source of the power to grant interim relief. "Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the Tribunal without being itself referred in express terms". The two questions which arose from this conclusion were also adverted to by the Supreme Court. The first question was the procedure for granting such interim relief and the second the principles for granting such interim relief. It had been contended before the Supreme Court that having regard to the definition of the word "award" in Section 2(b) of the Act as "an interim or final determination by an Industrial Tribunal of any Industrial Dispute or of any question relating thereto", any order granting interim relief would have to be published as provided in the Act. The Supreme Court held that there were two kinds of interim reliefs. The first was an interim determination of a question referred to the Tribunal. In other words, it is open to the Tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This would be an interim determination of any question relating to the matters referred. In such a case it would have to be published as required by Section 17. These interim awards are to be distinguished from interim relief which does not decide the industrial dispute or any part of it. In this second sense, relief is or any part of it. In this second sense, relief is granted under the power conferred on the Tribunal under Section 10(4) with respect to matters incidental to the points of dispute for adjudication.

12. However, the Supreme Court did not decide for the purposes of that case whether an order granting interim relief of the second kind was an award within the meaning of Section 2(b) requiring publication u/s 17.

13. As far as the principles for granting interim relief in the second are concerned the Supreme Court observed that ordinarily, interim relief should not be the whole relief that the workmen would get if they succeed finally. The Supreme Court itself curtailed the relief which had been granted by the Tribunal. In doing so it considered prima facie the validity of the order of suspension impugned by way of Industrial Dispute (see also *The Management of Ranipur Colliery Vs. Bhuban Singh and Others*,

14. The Division Bench of the Patna High Court in *The Management of the Bihar State Electricity Board, Patna v. The Workmen of the Bihar State Electricity Board and Ors.*, (supra), followed the Supreme Court's decision in the *Hotel Imperial's*

case (supra) and upheld the power of the Tribunal to grant interim relief u/s 10(4). According to the Patna High Court this also followed from a construction of Section 2(b) which defined an award as meaning an interim or a final determination of any question relating to an Industrial Dispute. But the Division Bench held that even such an interim decision would have to be made in the form of an interim award as a mere order could not be enforced under the Act nor could the employer be punished if he violates such an order. If therefore money was to be realised quickly from a recalcitrant employer the workman would have to recover it u/s 33C(1), of the Act. According to the Bench it would follow that in granting interim relief : (1) the Tribunal would have to be satisfied *prima facie* that the workman had a strong case against dismissal or termination of service; (2) The Tribunal must give a cogent reason for granting the relief; and (3) the decision would have to be published as an interim award.

15. This view was reiterated in *Khadi Gra-modyog Sangh. Muzaffarpur v. State of Bihar*, (supra) which went on to say:

"...The refusal to grant interim relief, by way of interim award in favour of such person who have been deprived of such benefit shall certainly be without prejudice to the merits of their case during the final adjudication of the dispute referred."

16. The view expressed by the Patna High Court appears to have been accepted by the Delhi High Court in *Delhi State Cooperative Bank Ltd. v. R.C.Yaduvanshi*, C.W. No. 1672 of 1987 Nov 10 : 1987 FLR 1988 (56) .

17. It is clear from the aforesaid discussion that the power of Labour Court, Tribunal etc. to grant interim relief is derived from Section 10(4), It is discretionary in nature. The discretion must be exercised according to established principles for granting interim relief.

18. The next question is whether Section 15(2)(b) is a parallel source of power to grant interim relief. Section 15(2)(b) forms part of the West Bengal Amendment to the principal Act. The first amendment was in 1980. It substituted Section 15 in the Principal Act as far as ; West Bengal was concerned. The 1980 Amendment was replaced in 1986 by the West Bengal Amendment Act of 1986. Except for certain changes which are not material for the purpose of this case, the 1986 Amendment is a reproduction of the 1980 Amendment.

19. Section 15 of the Principal Act reads 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, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to Sub-section (2-A) of Section 10, submit its award to the appropriate Government."

20. The West Bengal Amendment as it now reads provides:

"15. Duties of Labour Courts, Tribunals and National Tribunals- (1) Where an Industrial Dispute has been referred to a 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.

(2) Where an Industrial Dispute has been referred to a Labour Court or Tribunal under Sub-section (1) of Section 10, it shall,

(a) after the filing of statements and taking of evidence, give day to day hearing and pronounce its award, other determination or decision in the manner specified in Section 17AA, and

(b) after hearing the parties to the dispute, determine, within a period of sixty days" from the date of the order referring such industrial dispute or within such shorter period as may be specified in such order, the quantum of interim relief admissible, if any:

Provided that the quantum of interim relief shall, in the case of discharge, dismissal or retrenchment of a workman from service or termination of service of a workman, be equivalent to the subsistence allowance admissible under the West Bengal Payment of Subsistence Allowance Act, 1969 (West Bengal Act XXXVIII of 1969)."

21. Section 15(1) of the West Bengal Amendment is identical with Section 15 of the Principal Act.

22. The scope of Section 15(2)(b) was considered in the case of Ganges Printing Ink Factory Employees Industrial Co-operative Society Ltd. and Ors. v. The 7th Industrial Tribunal and Ors. (supra). The Division Bench held that as the new provision made it a statutory obligation for the Tribunal to grant such quantum of interim relief as would be admissible within 60 days from the date of reference, such interim relief should be granted "irrespective of the merit of the dispute". The Court construed the word "admissible" with reference to the definition of the word in the law of evidence and held that it meant matters which are relevant and not otherwise excluded by law. The Court accordingly came to the conclusion that when Section 15(2)(b) speaks of "admissible interim relief", it speaks of such reliefs which are proximately correlated to the main relief and not foreign to the dispute under adjudication. The Bench categorically jettisoned the theory that the principles for granting interim relief in suits were applicable and said that the matters to be considered by the Tribunal should be (i) admissibility; (ii) any objection as to the sustainability of the reference and (iii) effect of the grant or its refusal on the employer or the workman.

23. The three premises from which the Court drew the inference that the Legislature did not intend the merits of the dispute to be considered while disposing of an application for interim relief were (1) the time to file the written

statement by the parties may be fixed much after 60 days, but Section 15(2)(b) required the Tribunal to dispose of the application for interim relief within 60 days from the date of reference; (2) A preliminary adjudication as to the chances of ultimate success would not be consistent with the scheme of Section 15(2)(b) which required granting of early relief; (3) The word "admissible" after the words "interim relief meant only proximate correlation to the ultimate relief.

24. The decision in *Ganges Printing* (supra) was followed in *The Statesman Ltd. v. The Second Industrial Tribunal of West Bengal and Ors.* 1991 (I) CHN 80; *Birla Industrial and Technological Museum Vs. Seventh Industrial Tribunal and Others*, and more recently by a Division Bench in *Vishan Roy v. Bayer (India) Ltd.* (supra).

25. I am unable to accept the reasons formulated in *Ganges Printing* (supra) for doing away with any consideration of the merits of the main dispute at the interlocutory stage.

26. The fact that the time frame prescribed for disposing of the entire proceedings may be larger than the time frame prescribed for disposing of an application for interim relief u/s 15(2)(b) does not logically lead to the conclusion that the prayer for interim relief must be considered without any reference to the merits of the dispute. As already observed, in every proceeding an application for interim relief by its very nature must be made before the conclusion of the main proceedings and is normally made at the commencement. Even in a civil suit, the plaint does not come up for consideration before the Court until it is served on the defendant with the summons and the defendant enters appearance. Yet even before this is done, a plaintiff can and often does apply for interim relief. This may or may not be granted according to the plaintiffs ability to establish, at least prima facie, his chance of success in the main suit.

27. Secondly, requiring the Labour Court or Tribunal to be prima facie satisfied as to the merits of the dispute does not involve any delay. Interim applications may be and generally are decided on the affidavits. Therefore the requirement for such a prima facie finding cannot run counter to the object of Section 15(2)(b) at all.

28. It would also not be correct (in my judgment) to limit the word "admissible" only to the sense it is used in the law of evidence. There is nothing in the statute which requires the word to be read in such a restricted manner. The word must be given its normal meaning. The word "admissible" has been defined in *Black's Law Dictionary* as "pertinent and proper to be considered in reaching a decision". Used with reference to the issues to be decided in any judicial proceeding it would be both "pertinent, and proper" to consider the merits of the case to decide whether interim relief should be granted at all or not.

29. Besides, the decision in *Ganges Printing* (supra) proceeds on the basis that the interim relief is granted u/s 15(2)(b). In other words Section 15(2)(b) is seen as an alternative source to Section 10(4) to grant interim relief. In my judgment it is not. Section 15 falls within chapter 4 of the Act which deals with the

procedure, powers and duties of authorities. The procedure and powers of Courts and Tribunals have been laid down in Section 11(1) which entitles the Labour Court and Tribunal to follow such procedure as it may think fit subject to any rules that may be made in this behalf. The policy behind this is that the dispute should be resolved unencumbered by "the plethora of procedural laws and appeal upon appeals and revisions applicable to Civil Courts" (see: Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, Similarly, Section 15 in the Principal Act and the West Bengal Amendment of Section 15, were introduced in the Statute to ensure the achievement of one of the objects of the Act itself namely, to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers.

30. It needs to be emphasized that Section 15 does not in terms provide for the powers of the Labour Courts, Tribunals etc. but for their duties. This is clear from the heading to the Section. The duty envisaged in Section 15 is expeditious disposal of the dispute. In my view all that Section 15(2)(b) does is to oblige the Labour Courts, Tribunals etc. not only to dispose of the main dispute expeditiously but also to dispose of the application for interim relief without any delay. In neither the Principal Act nor in the West Bengal Amendment does Section 15 deprive the Labour Courts or Tribunals of their power or discretion to grant or not to grant interim relief. All that it does is to regulate the quantum of relief in the cases covered by the proviso to Section 15(2)(b).

31. Section 15(2)(b) requires the Labour Court etc. to "determine... the quantum of interim relief admissible, if any". The words "if any" qualifies the words "interim relief". Clearly therefore the sub-section provides for a situation where interim relief may not be granted at all. But, if it is so granted, the Labour Court etc. would have to address itself to the question as to the quantum or how much relief was admissible.

32. Read in this sense, a Labour Court, Tribunal etc. while disposing of an application for interim relief would have to (1) determine whether any interim relief at all should be granted; (2) if so, determine the quantum of interim relief allowable having regard to the facts of the case; (3) As far as discharge, dismissal, retrenchment or termination of service is concerned, the second step is obviated and the Tribunal would be bound to grant the equivalent to the subsistence allowance as provided under the West Bengal Payment of Subsistence Allowance Act, 1969.

33. In the Ganges Printing's case (supra) as well as the other decisions which followed it, the Court limited the role of the Tribunal to the second and third stages noted above. In other words, upon an industrial dispute being referred, the Tribunal would have to grant interim relief unless the reference itself was not maintainable. The Courts reached this conclusion because the impact of the words "if any" in Section 15(2)(b) was not considered.

34. This brings us to the question as to what the Tribunal must consider in

determining whether any interim relief should be granted. In my opinion, the Labour Court, Tribunal etc. must be satisfied at least prima facie that the workman has at least a plausible chance of success ultimately. This would include determination of a challenge to the maintainability of the reference itself.

35. Such an interpretation would not only be in keeping with the well established principles for granting interim relief, but it would also be in keeping with the objects of the Act.

36. The principle underlying the grant of interim relief is to grant financial support and protection to an employee who has been victimised or been subjected to unfair labour practice so that he may not be wholly deprived in the almost inevitable interval between the commencement of the proceedings for vindicating his rights and its final disposal. The idea of deprivation assumes that it is otherwise due. Payment can only have been "otherwise due" if the workman has been illegally dismissed. If a workman has been legally dismissed there is no question of his being legally entitled to any wages after such dismissal. Therefore in deciding whether a workman should not be "deprived" pending final adjudication, he must show that he has an arguable case on merits.

37. But the decision in Ganges Printing (supra) taken to its logical conclusion, would mean that a workman who may have been dismissed on serious charges on the basis of a domestic enquiry properly held by raising an Industrial Dispute, would be entitled to interim relief in the same manner as a workman who may have been illegally dismissed. Again an employer (who is as much entitled to a fair deal as an employee) who has strictly followed that law in dismissing an employee cannot be put on par with an employer who has not. This would be unfair, unjust and irrational.

38. If the principle is that the employer being the richer party must be made to pay the worker irrespective of the ultimate result of the dispute even in a dispute raised by the workman which may be ultimately found to be devoid of all merits, it would encourage frivolous and unsubstantial disputes and would run counter to the object and purposes of the Act, namely, the promotion of industrial peace in the interest of the general public (see Punjab National Bank Ltd. Vs. Sri Ram Kanwar, Industrial Tribunal, Delhi, The Rajasthan State Road, Transport Corporation and Anr. etc. v. Krishna Kant etc. etc., (supra).

39. Furthermore, if the sole purpose for granting interim relief to the workman is to keep him solvent pending final adjudication of the industrial dispute irrespective (sic.) of the merits of the dispute, the relief would not be interim at all. The money which the workman would get would not be subject to or be affected by the final outcome because the ground for the grant of the interim relief would remain and also because the grant was made irrespective of the merit.

40. Social justice does not mean that reason and fairness must always and inevitably yield to the convenience of a party convenience of the employee at the cost of the employer as in this case - in an adjudication proceeding, such

onesided or partial view is really next of kin to caprice or humour. Justice would demand that the applicant for interim relief shows that the dispute raised by him is not frivolous.

41. Finally if the grant of interim relief is to automatically follow upon an application being made by a dismissed workman, the statute itself would have provided for the dismissed employee to be paid interim relief as a matter of course subject to the question of maintainability of the reference. By making the relief automatic, the role of the Tribunal is reduced to that of cipher. The application to the Tribunal would be a meaningless formality unless the Tribunal is given the power to see that the applicant is *prima facie* entitled to the main relief. It is only then that the Tribunal would consider the relative effect of the grant/refusal on the employer/workman and in the case of discharge, dismissal, retrenchment or termination grant the workman the subsistence allowance permissible under the West Bengal Payment of Subsistence Allowance Act, 1969.

42. For these reasons I respectfully differ from the view expressed in *Ganges Printing case* (*supra*) and the other decisions following it and hold that Section 15(2)(b) does not take away the discretion of the Tribunal to refuse to grant interim relief at all. The discretion of the Tribunal must of course be judicially exercised according to well established principles including the establishment of an arguable case by the applicant as to the merit of the dispute. For the purposes of satisfying the Tribunal on this point, it would not be necessary for the applicant to file his written statement. It would suffice if the application for interim relief itself contains sufficient material for this purpose and the Tribunal cannot make the filing of a written statement a pre condition to hearing of an application for interim relief.

43. I would therefore confirm the judgment under appeal insofar as it directs the Tribunal to dispose of the application for interim relief without insisting on the workman filing her written statement in the main matter. But in disposing of the application for interim relief the Tribunal must be satisfied at least *prima facie* on the material before it that the workman has an arguable case on the merits, Subject to such satisfaction being reached, interim relief must be granted in terms of the provision to Section 15(2)(b) to the applicant.

44. In view of the difference with the views expressed in the *Ganges Printing* (*supra*) case and the other decisions following it, the issue will have to be decided by a larger Bench. Pending such final decision, in my opinion it would be appropriate to allow the Tribunal to dispose of the application for interim relief in the light of the observations in this judgment.

D.K. Jain, J.

45. I agree.