

(2004) 12 CAL CK 0034

In the Calcutta High Court

Case No : M.A.T. No. 2210 of 1998 and F.M.A. No. 1512 of 2000

Webel Video Devices Ltd.

APPELLANT

Vs

Prasanta Kumar Das and Others

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226, 32
Industrial Disputes Act, 1947 — Section 10, 2, 2A, 33C

Citation : (2007) 3 CHN 8

Hon'ble Judges : Asok Kumar Ganguly, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : A.C. Chakraborty and Amit Chakraborty, for the Appellant;Bijoy Kumar Das and Kushal Pal, for the Respondent

Final Decision : Allowed

Judgement

Asok Kumar Ganguly, J.—This appeal is directed against a judgment and order dated 15.06.1998 passed by a learned Judge of the Writ Court. By the said judgment and order, the learned Judge of the Writ Court was, inter alia, pleased to quash the order of dismissal dated 13.11.1988 passed against the respondents/writ petitioners and allowed the writ petition.

2. Facts relating to filing of the writ petition are noted as follows:

While the respondents/writ petitioners were working as employees of Webel Video Devices Limited, a company registered under the Companies Act (hereinafter referred to as the "said company"), they were served with a chargesheet dated 09.04.1986 in which it was alleged that the writ petitioners were guilty of riotous and disorderly behaviour during the working hours at the establishment and such acts on the part of the writ petitioners are subversive of discipline. The relevant portion of the said chargesheet against the writ petitioner No. 1 is as follows:

It has been reported against you as under:

At around 2 p.m. on 24.3.1986, when Mr. S. N. Das, Jr. Engineer of the company, was being assaulted by Sri Anup Mazumdar, Staff No. (223), near the Diesel Generator Room, adjacent to the A/C Plant Room, you, along with Sri Sandip Ganguly (267), joined Sri Mazumdar and both of you started beating Mr. Das with lathi/rod etc. Subsequently, Sri Pradip Das, Staff No. (258), also joined you in assaulting Mr. Das. You might have continued assaulting Mr. Das if some other officers did not intervene and rescue him. As a result of your assault, Mr. Das sustained injuries for which he had to be rushed to the hospital, after a check-up by the company's Medical Officer. From the comments hurled and remarks passed by a few of your co-workmen it appeared that the attack by you along with others on Mr. S.N. Das was preplanned and deliberate.

The above acts on your part would, if proved, amount to "riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline", which are gross misconducts under Clause 27(VIII) of the Model Standing Orders prescribed by the Government of West Bengal and applicable to this factory and merit strict disciplinary action.

You are, therefore, hereby required to explain in writing for the circumstances alleged against you as above which should reach the undersigned within 72 hours from your receipt of this chargesheet. In the event of non-receipt of your written explanation, as directed above, it will be assumed that you have no explanation to offer and the matter against you will be proceeded with accordingly without further reference to you.

3. The relevant portion of the said chargesheet against the writ petitioner No. 2 is as follows:

It has been reported against you as under:

At around 2 p.m. on 24.3.86 when Mr. S.N. Das, Jr. Engineer of the company, was being assaulted by Sri Anup Mazumdar, Staff No. (223) near the Diesel Generator Room, adjacent to the A/C Plant Room, you, along with Sri Prasanta Das (265), joined Sri Mazumdar and both of you started beating Mr. Das with lathi/rod. Subsequently, Sri. Pradip Das, Staff No. (258), also joined you in assaulting Mr. Das. You might have continued assaulting Mr. Das if some other officers did not intervene and rescue him.

As a result of your assault, Mr. Das sustained injuries for which he had to be rushed to the hospital, after a check-up by the company's Medical Officer. From the comments hurled and remarks passed by a few of your co-workmen it appeared that the attack by you along with others on Mr. S.N. Das was preplanned and deliberate.

The above acts on your part would, if proved, amount to "riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline", which are gross misconducts under Clause 27(VIII) of the Model Standing Orders prescribed by the Government of West Bengal and applicable to

this factory and merit strict disciplinary action.

You are, therefore, hereby required to explain in writing for the circumstances alleged against you as above which should reach the undersigned within 72 hours from your receipt of this chargesheet. In the event of non-receipt of your written explanation, as directed above, it will be assumed" that you have no explanation to offer and the matter against you will be proceeded with accordingly without further reference to you.

4. The allegations levelled in the said chargesheet against the writ petitioner No. 3 are as follows:

It has been reported against you as under:

At around 2 p.m. on 24.3.1986 when Mr. S.N. Das, Jr. Engineer of the company, came down to the shop floor from the Conference Room of the Administrative Block, you were found rushing towards him. You were also shouting at Mr. Das expressing your intention to beat him. Mr. Das, being scared, started running towards the A/C Plant Room but before he could reach the said room you hit him and he fell down in front of the Diesel Generator Room, which is adjacent to the A/C Plant Room. You continued to hit him, when some of your co-workmen (Sarbasree, Sandeep Ganguly--267, Prasanta Das -265) also joined you and Mr. Das was beaten with some implements namely iron rods, lathies, angle irons etc. Subsequently, Shri Pradip Das (258) also appeared there with some implements and hit Mr. Das. You might have continued assaulting Mr. Das, if some other officers would not have intervened and rescued him.

As a result of your assault, Mr. Das sustained injuries for which he had to be rushed to the hospital, after a check-up by the company's Medical Officer. From the comments hurled and remarks passed by a few of your co-workmen it appeared that the attack by you along with others on Mr. S.N. Das was preplanned and deliberate.

The above acts on your part would, if proved, amount to "riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline", which are gross misconducts under Clause 27(VIII) of the Model Standing Orders prescribed by the Government of West Bengal and applicable to this factory and merit strict disciplinary action.

5. The writ petitioners were chargesheeted by one Sri S.S. Chattopadhyay, Factory Manager of the said company. Thereupon, an Enquiry Officer was appointed and held enquiry. An officer was also appointed as Presenting Officer to present the case on behalf of the Management. Thereafter, pursuant to an enquiry, an order of dismissal was passed and the writ petitioners were dismissed from their services by the dismissal orders dated 13.11.1988.

6. Challenging the orders of dismissal, a writ petition was filed before the learned Judge of the Writ Court. It was alleged in the writ petition that the said company is a "State" within the meaning of Article 12 of the Constitution of India and that

the appointment of the Enquiry Officer was perverse and the findings of the Enquiry Officer were arrived at in violation of the principles of natural justice. It was also alleged that the Enquiry Officer was not appointed by the competent authority and there has been a non-application of mind by the said Enquiry Officer. Apart from that, it was also alleged that double standard has been followed by the said Enquiry Officer, which shows his bias.

7. The learned Counsel appearing on behalf of the appellant assailed the judgment under appeal by urging before us two points on the maintainability of the writ petition. The first point, which was urged before us, is that the said company is not a "State" within the meaning of Article 12 of the Constitution of India and the second point, which was urged was that assuming the same is a "State" within the meaning of Article 12, the dispute arising out of dismissal of the writ petitioners is an industrial dispute within the meaning of the Industrial Disputes Act (hereinafter referred to as the "said Act") and against an industrial dispute, a writ petition is not maintainable. It was urged that the proper remedy for the writ petitioners was to raise an industrial dispute by following the procedures under the said Act and the writ petition is wholly misconceived.

8. Of the said two points as raised above, emphasis was placed more on the second point. The writ petitioners are the workmen within the meaning of the Industrial Disputes Act and the chargesheet against them contains recitals alleging violation of the Model Standing Orders so the matter can not be heard and decided by a Writ Court avoiding adjudication under the said Act. In support of these submissions, the learned Counsel for the appellant referred to the writ petition.

9. In paragraph 1 of the writ petition, it has been stated categorically that the writ petitioners are the workmen under the said company and are employed at the factory at Taratolla in Calcutta and it was also mentioned that the writ petitioners were appointed initially as "unskilled" workers and were subsequently promoted.

10. In the said chargesheet, which was filed against the writ petitioners, there is a clear reference about violation of Clause 27 (viii) of the Model Standing Orders, which is applicable to the factory. This is true in respect of all the three writ petitioners. Therefore, from the aforesaid facts, it cannot be disputed and it was not disputed by the learned Counsel for the respondents that the writ petitioners are the workmen of the said company within the meaning of Section 2(s) of the said Act. In fact, in the affidavit, which was filed before the learned Judge of the Writ Court on behalf of the said company, this point was specifically raised in paragraph 5 of the affidavit-in-opposition that the dispute raised in the writ petition is a dispute under the said Act. As such, the writ petition under Article 226 of the Constitution of India is not maintainable and on that ground, it should be dismissed. While dealing with the said objection, it was admitted in paragraph 4 of the affidavit-in-reply filed by the writ petitioners that the writ petitioners have not raised any industrial dispute before any authority.

11. Therefore, this becomes a question for decision before the Court, namely, when admittedly the writ petitioners are workmen under the said Act and the dispute arising out of their dismissal is an industrial dispute within the meaning of the said Act whether, writ petition can be filed before a Writ Court and bypassing thereby the entire machinery of adjudication under the said Act, especially when this question was raised in the affidavit-in-opposition filed by the appellants before the learned Judge of the Writ Court.

12. Since, this question goes to the root of the matter, this Court heard this appeal on this question only. It may be noted that dis-regarding the aforesaid objection, the learned Judge of the Writ Court proceeded to decide the legality of dismissal of the writ petitioners on merit and examined the report of the Enquiry Officer and held that the conclusion of the Enquiry Officer is based on no evidence and the chargesheet against the writ petitioners is based on surmises and conjectures. Ignoring the aforesaid objections the learned Judge of the Writ Court went into a detailed examination of the facts of the case.

13. The learned Judge of the Writ Court acted as if he is the fact-finding authority and came to a finding that "it is not rational and reasonable to hold that Sri S.N. Das was assaulted on 24.03.1986 by the writ petitioners as alleged or at all."

14. The learned Judge of the Writ Court also held that the procedure adopted in the enquiry was violative of the provisions contained under Articles 14 and 21 of the Constitution of India. The learned Judge also held that in the enquiry, the management was represented by a law graduate and the writ petitioners ought to have been given permission to be represented by a law graduate. But, since the prayer for engagement of a lawyer was rejected, the approach of the Enquiry Officer was unfair and unjust. Therefore, the enquiry was conducted in violation of the provisions of Articles 14 and 21 of the Constitution of India and, as such, it was set aside by the learned Judge.

15. Now, the question is whether the Writ Court should have exercised its jurisdiction under Article 226 of the Constitution of India while deciding an industrial dispute when a complete remedy to the aggrieved workmen to ventilate their grievances has been provided under the said Act. It is well-known if the Industrial Tribunal finds that the domestic enquiry has not been properly held, the matter is at large before the Tribunal and it can give opportunity to both the parties to adduce further evidence before it. Thus, the learned Tribunal can hold a fresh enquiry and come to a finding of guilt or exoneration on the facts. But, a Writ Court cannot do that.

16. Reliance was placed by the learned Counsel for the appellant on the well-known judgment in the case of *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, In paragraph 8 of the said judgment (page 503 of the report), the learned Judges considered the object of the said Act. The learned Judges held that the object of the said Act is to make provision for the investigation and settlement of industrial disputes, which means an

adjudication of such disputes.

17. In paragraph 9 of the said judgment (page 505 of the report), it has been stated that a very extensive machinery has been provided for settlement and adjudication of the industrial disputes. In the instant case, the dispute, which has been raised in the writ petition, is certainly covered u/s 2A of the said Act.

18. Considering the provisions of Sections 2(k) and 2A of the said Act, the learned Judges held that if the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the said Act, only in that case, the Civil Court will be the proper forum. But, in the instant case, it is obvious that the dispute is covered u/s 2A of the said Act.

19. After discussing various Case Laws on the point along with various legal treaties, the learned Judges stated certain principles in paragraph 23 of the said judgment. Those principles are set out below:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

The instant case is covered under the third principle.

20. The aforesaid principles, which have been set out in paragraph 23 of the said judgment, have been further discussed in paragraph 24 where it has been held that in regard to a dispute over the dismissal of a workman, the same comes u/s 2A of the said Act.

21. In paragraph 24 of the said judgment, it has been held that if the dispute relates to dismissal of an unsponsored workman, which in view of the provision of law contained in Section 2A of the said Act, will be an industrial dispute and cases of such industrial disputes invariably are covered by the third principle.

22. These principles in Premier Automobiles have been further followed by the Hon'ble Supreme Court in a subsequent decision in the case of Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant and Ors. reported in 1999 (5) SCC 75. It is not in dispute that the said corporation was a statutory corporation having been constituted under the Road Transport Corporations Act,

1950. Even then in matters of industrial dispute, the Supreme Court held that the recourse to a Civil Court is not permissible. After considering the ratio of the judgment in Premier Automobiles, the learned Judges held in paragraph 28 of the said judgment that the whole idea in enacting the said Act has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between the workmen and the employers and the idea has been to ensure that the workmen do not get caught in the labyrinth of the Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws.

23. The learned Judges also held that the forums created under the Industrial Disputes Act are empowered to grant relief as they think just and appropriate. Such forums can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures with their awarding powers. The awards of such Tribunals may be amenable to the High Court under Article 226 of the Constitution of India and to the Supreme Court under Article 32 of the Constitution of India, but they are extraordinary remedies subject to several self-imposed constraints.

24. In paragraph 29 of the said judgment, the learned Judges held that the Civil Courts have no jurisdiction to entertain a suit arising between the employer and the workmen for the enforcement of the Industrial Employment Standing Orders, which gives rise to an industrial dispute. It was also stated that the dispute arising out of Section 2(k) and/or Section 2A of the said Act must be adjudicated in the forums created by the Industrial Disputes Act alone even if the dispute raised or relief claimed is based partly upon violation of certified Standing Orders and partly on general law of contract.

25. The learned Judges summarised the principles in paragraph 35 of which the second principle is directly applicable to the present case and is set out below:

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

26. In paragraph 31 of the said judgment, the learned Judges relied on a previous judgment of the Supreme Court in the case of Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, . In Jitendra Nath Biswas's case, the conditions of service of the workmen were governed by the certified Standing Orders. Same is the position here as the conditions of service of the writ petitioners are governed by the Model Standing Orders.

27. In Jitendra's case, the grievance before the Court was that the management took action in breach of the Standing Orders. On those facts, the learned Judges held that the Civil Court has no jurisdiction to entertain such a grievance.

28. In Jitendra's case, it was held that the scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the Civil Court by implication in respect of remedies, which are available under the said Act and for which a complete

procedural machinery has been provided (paragraph 6).

29. Reference was also made to an old Constitution Bench decision of the Supreme Court in the case of *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, . In paragraph 7 of the said judgment, the learned Judges held that though the powers conferred on the High Court under Article 226 are very wide and can take in within their sweep industrial disputes, but, the learned Judges held that the High Court is not the proper forum available to the workmen. The workmen can ventilate their grievances in a reference u/s 10 of the Industrial Disputes Act.

30. Relying on the judgment in *Basant Kumar*, a learned Judge of this Court followed the same principles in two cases and both of which are reported. One is *Thakur Majhi and Anr. v. Chairman-cum-Managing Director, Eastern Coalfields Limited and Ors.* reported in 1995 Cri LJ 127 and the second one is *Tapas Mondal and Ors. v. Eastern Coalfields Limited*, reported in 1995 Lab IC 1433. In both the cases, challenge before the Hon"ble High Court was relating to termination of service. In both the cases, the learned Judges relying on *Basant Kumar* held that the Writ Court is not the proper forum to ventilate the grievance of a workman for which a detailed provision is made under the said Act. It may be noted that in both the cases, the respondent was admittedly a State under Article 12 of the Constitution.

31. Reference, in this connection, may be made to paragraph 3 in the decision of *Thakur Majhi* (supra) and to paragraph 5 in the decision of *Tapas Mondal* (supra).

32. Reference, in this connection, may also be made to a Full Bench decision of the Rajasthan High Court in the case of *Gopi Lal Teli v. Sate of Rajasthan and Ors.* reported in 1995 Lab IC 1105. After considering various cases, in paragraph 38 of the said judgment, the learned Judges took a similar view and held that for redressal of grievance in connection with an industrial dispute, a writ petition under Article 226 of the Constitution of India is not maintainable save and except in very exceptional cases. The learned Judges came to the opinion in view of the fact that the said Act is a special statute and is a complete Code by itself.

33. Similar view has been taken by the Supreme Court in a recent decision in the case of *U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh*, This decision was further cited by the learned Counsel for the respondents in support of his contentions that the writ petition is maintainable. But, on a proper perusal of the ratio in the said decision, it is clear that the judgment is otherwise.

34. In paragraph 10 of the said judgment, the Court noted the submissions made on behalf of the Karmachari Sangh that the said corporation is an authority within the meaning of Article 12 of the Constitution of India and is answerable to Court for any arbitrary action. It was also argued that the certified Standing Orders have statutory force and, therefore, a writ petition Article 226 of the Constitution of India has been properly filed.

35. Similar contentions have been raised here that the said company is a "State" within the meaning of Article 12 of the Constitution of India and the dismissal of the writ petitioners has taken place in violation of the Model Standing Orders.

36. But, despite the aforesaid contentions, the learned Judges in paragraph 11 and page 272 of the report in U.P. Rajya Setu, held " we are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent-Union" in view of the fact that the dispute was an industrial dispute. The same is true in the present case.

37. After saying so, the learned Judges relied on the decision in the case of Premier Automobiles and quoted from the judgment of Premier Automobiles. In paragraph 12 of the said judgment, the learned Judges said that though the observations in Premier Automobiles were made in the context of the jurisdiction of the Civil Court, nevertheless the same should be followed by the Writ Court unless, a strong case is made out to deviate from the principles laid down in Premier Automobiles. Here no such case has been made out. It is admittedly a case of an industrial dispute. The writ petitioners are the workmen as defined u/s 2(s) of the said Act and the dispute is an industrial dispute as defined u/s 2(k) read with Section 2A of the said Act. Therefore, the Industrial Court/Tribunal is the proper forum. The learned Judge, thus, fell into error by entertaining the writ petition despite the fact that an objection was taken by the said company in its affidavit-in-opposition at its earliest stage before the learned Judge.

38. The learned Counsel for the respondents also relied on another decision of the Supreme Court in the case of U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, . The learned Counsel relied on paragraph 27 of the said judgment and on the last few lines, where the learned Judges of the Supreme Court held that the power conferred under Article 226 of the Constitution is very vast. But, after saying so, the learned Judges held that the Apex Court has laid down certain guidelines subject to which the High Court may exercise its jurisdiction, even though such guidelines are not mandatory.

39. The learned Judges have made it clear in the case of Chandra Bhan Dubey that the High Court does not interfere where equally efficacious alternative remedies are available or where there is an established procedure to enforce a right. The aforesaid words of caution given in Chandra Bhan Dubey make it clear that in a case like this where there is a special remedy created under a special Act, which is a self-contented Code, the Writ Court should not interfere. So even following the ratio in Chandra Bhan, it is very difficult for this Court to uphold the judgment of the learned Judge of the Writ Court.

40. The learned Counsel for the respondent placed reliance on the Apex Court's judgment in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, in order to contend that the availability of an alternative remedy does not oust the High Court's jurisdiction to entertain a writ petition. As a general proposition, this cannot be disputed, but, its application depends on

the facts of each case.

41. In Whirlpool, factually it became clear to Court that the authority issuing the show-cause notice had no jurisdiction in law to issue the same. The Registrar of Trade Mark, it was found by the Court, could not act as a Tribunal. It was on the basis of those facts that the Apex Court held that the alternative remedy is not a bar. The facts in the present case are totally different. It is nobody's case that in the facts of the present case, an adjudication by the Industrial Tribunal would have been without jurisdiction. In fact, for such an adjudication, Industrial Tribunal is the appropriate forum. So, this ratio in Whirlpool has no application to the present case.

42. The next decision cited was rendered in the case of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, .

43. In that case, departmental proceedings were initiated against a judicial officer and, ultimately, the officer was compulsorily retired by way of penalty. The decision of the Bombay High Court on the administrative side was upset by its Division Bench on the judicial side. The Supreme Court found that in doing so, the Division Bench of Bombay High Court exceeded its power of judicial review and acted as if it was functioning as a Court of Appeal over the findings of the disciplinary authority. Therefore, the Supreme Court, ultimately, reversed the judgment of the Division Bench.

44. This Court fails to appreciate relevance of the ratio in Shashikant's case to the facts of the present case.

45. On the submissions of the learned Counsel for the respondents that during the pendency of the proceedings, there is a structural change in the said company and the said company virtually does not exist. Supplementary affidavit was allowed to be filed by both the parties. From the supplementary affidavit filed by one Sri Pronab Kumar Majumdar, it appears that the said company by a notice dated 07.07.2004 informed its regular employees, who are on the roll about its early retirement scheme and it was also said that pursuant to the said notice, the operation of the said factory has been closed from 1.1.2004, but, the said company has not been wound up. It was also reiterated in the said supplementary affidavit that the appellant-company is a 100 per cent subsidiary of the West Bengal Electronics Development Corporation (WBEDC) and being a 100 per cent subsidiary company, WBEDC exercises its control on the said company and the said WBEDC is an existing company.

46. In view of the aforesaid facts, this Court does not find that in view of the subsequent development any different consideration is necessary by this Court.

47. For the reasons aforesaid, the appeal is allowed. The judgment of the learned Judge of the Writ Court is set aside. This judgment will not prevent the respondents/writ petitioners from seeking their remedy under the appropriate provisions of the Industrial Disputes Act.

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

49. Let urgent xerox certified copy of this judgment, if applied for, be given to the learned Counsel for the parties.

Alok Kumar Basu, J.

50. I agree.