

(1999) 05 CAL CK 0007
In the Calcutta High Court
Case No : Matter No. 2880 of 1993

Workmen, Rep. by South Eastern Roadways Workmen's
Union and Another

APPELLANT

Vs

Industrial Tribunal (VIII) and Others

RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 1 LLJ 1367

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—In the instant writ petition the 1st petitioner is the workmen Union and 2nd petitioner is its General Secretary. Petitioners have questioned the Award passed by the Eighth Industrial Tribunal, West Bengal in Case No. VIII-74/88 which was referred to it by the State Government Order No. 239/IR/4L-6-86 dated January 30, 1988. The said Award has been published in pursuance of Section 17 of the Industrial Disputes Act, 1947 (for short the Act).

2. Three issues were referred to the learned Tribunal u/s 10 of the Act, for adjudication, and the same read as under:

"1. Whether order dated November 28, 1985 transferring Shri B.N. Sharma from Entally Unit to Barabazar Unit is justified? To what relief, if any, is he entitled?

2. Whether lock-out of the establishment at 25, Dr. Suresh Sarkar Road, Calcutta-700 014 with effect from March 11, 1986 and lockout of the establishment at 134/4, M.G. Road, Calcutta-700 007 with effect from April 8, 1986 are justified? To what relief, if any, are the workmen entitled?

3. Whether the closure of the establishment at 25, Dr. Suresh Sarkar Road, Calcutta-700 014 and 134/4, M.G. Road, Calcutta-700 007 is real? To what relief,

if any, are the workmen entitled?"

3. The learned Tribunal recorded the oral evidence and also marked documentary evidence. Based thereupon and also upon the oral submissions made by the respective parties it returned its findings on the said three issues in favour of the respondent Management.

Issue No. 1 was answered in favour of the employer firm and it was held that the transfer of Shri B.N. Sharma is a bonafide and justified one.

With reference to issue No. 2, the learned Tribunal returned the finding that the lock-out of the establishment of the firm at 25, Dr. Suresh Sarkar Road, with effect from March 11, 1986 and the lock-out of the Branch of the firm at 134/4, Mahatma Gandhi Road with effect from April 8, 1986 were justified.

With reference to issue No. 3, the learned Tribunal came to the conclusion that the closure is a genuine one.

4. The petitioner has assailed the said Award:

The Award has been impugned on several grounds. It was contended on behalf of the petitioner by their learned advocate Mr. Kalyan Bandhopadhyay that the Tribunal erred in law in not discussing or considering the evidence of the witnesses of the petitioner Union and the documentary evidence adduced on their behalf and committed material irregularity in the appreciation of evidence amounting to error of law. It was also contended on behalf of the petitioner that the Award is afflicted with the vice of perversity. It was also contended that the Tribunal erred in relying upon a settlement which was neither pleaded nor was it any longer in operation. The said settlement relied upon by the Tribunal was inadmissible in evidence. It was also contended that the Tribunal erred in not taking note of the fact that lock-out was effected in disguise of a closure and in respect of only a part of the establishment would not amount to a real closure. In other words, declaration of closure in respect of one portion of a single integrated establishment while continuing to carry on business on the other part is not permissible nor can the closure be said to be real.

5. Mr. Partha Sarathi Sengupta, senior advocate on behalf of the respondent management contended that the award is one based upon appreciation of evidence and material on record. The findings of fact arrived at by the Tribunal are not open to challenge in this proceedings except on the ground of perversity. The impugned award does not suffer from any such infirmity and this Court in its writ jurisdiction cannot appraise the evidence or sit in appeal over the impugned Award as a Court of Appeal. The writ petition, it was contended, is without merits and deserves to be dismissed with costs.

6. Before we consider the rival contentions, it would be appropriate to consider the scope and jurisdiction of this Court.

In Syed Yakoob Vs. K.S. Radhakrishnan and Others, , a Constitution Bench

considered the limits of the jurisdiction of High Court in issuing writ of certiorari under Article 226. It was held as under:

"..... A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals, these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Court under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*,

7. A writ of certiorari will not issue as a cloak in appeal as disguised. It does not lie to bring up an order or decision for rehearing. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown. The Supreme Court in *P. Kasilingam Vs. P.S.G. College of Technology*, found fault with the High Court when in the judgment under appeal before the Supreme Court, it was noticed that the High Court had examined for itself the correctness of the conclusion reached by the authority and decided what was the proper view to be taken or the order to be made. The Supreme Court while setting aside the judgment of the High Court under appeal

before it observed thus:

"The High Court has viewed the matter from a wrong perspective. In quashing the order of the Government, the High Court observes that its finding is based on no evidence but proceeds on conjectures and surmises. In doing so, it ignores the long line of decisions starting from T.C. Basappa v. T. Nagappa, laying down that the supervision of the High Court exercised through writs of certiorari goes on two points. One is the area of jurisdiction and the qualification and conditions of its exercise, the other is the observance of law in the course of its exercise. Such writs are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice. It was rightly observed in Basappa case that a writ of certiorari will not issue as a cloak of an appeal in disguise. It does not lie to bring up an order or decision for rehearing. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

8. In Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, the Supreme Court considered how far and to what extent in exercise of its jurisdiction under Article 226 or 227 of the Constitution Courts deal with factual findings. After observing that the jurisdiction of the High Court is akin both under Articles 226 and 227 of the Constitution posed the question "can the High Court interfere with the findings of fact?" and answered the same in the following terms:

"..... It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate Court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji Vs. P.R. Mukherjee and Others, , it was laid down by this Court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities."

9. The principle thus laid down is that if the fact finding bodies/tribunal have acted properly in law and if the findings could not be discarded as perverse in law in the sense that no reasonable person instructed in law could have come to such a finding, such findings should not be interfered with within the exercise of the jurisdiction by the High Court under Articles 226 and 227 of the Constitution.

10. A Division Bench of this High Court in an appeal against an order quashing an Award of an Industrial Tribunal and remanding the matter for hearing by the

Tribunal in accordance with the directions given in the order under appeal before it, considered what is a "perverse" finding. It will be appropriate to extract the relevant paragraph from the judgment which reads as under:

"It has been argued before us that the findings of the Tribunal are perverse and are the result of bias. But merely because the Tribunal has drawn certain adverse inferences or conclusions from the evidence on record, it does not necessarily lead to the conclusion that the Tribunal was partial or biased or that the findings are perverse. The Tribunal has given reasons in great detail and it may be that in certain matters the line of reasoning is not very cogent or logical or the Tribunal may have made observations and offered criticism which the Tribunal might not properly have made. But that is far from saying that the findings are arbitrary or perverse or are actuated by bias. A perverse finding is not only against the weight of evidence but is altogether against the evidence itself. A wrong finding cannot be said to be perverse merely because it is possible to take a different view on the evidence. The Tribunal has found upon consideration of the evidence in this case that the retrenchment was not bona fide and it was actuated by parochial considerations and the Tribunal has given reasons for coming to the conclusion. It may be that this finding is a wrong one but it cannot be said that it is a finding which is based on no evidence or is a perverse finding."

11. It is in the light of the above well settled principles that the matter as also the contentions urged before Court need to be considered.

12. As there are three separate issues which have been adjudicated upon by the learned Tribunal in its Award under challenge, it would be appropriate to consider the respective issues in seriatim.

13. Before we take up the said consideration of issues, the case pleaded by the respective parties before the Tribunal may be stated.

14. It is the case of the petitioner Union that South Eastern Roadways, a partnership firm, was established in Calcutta in 1959. At the time of closure of the firm, all the partners of the firm are of the Goel family which had established certain other firms viz., Road Transport Corporation and another organisation viz., Supreme Roadways. The head office of the Road Transport Corporation is at 13, Tarachand Dutta Street, Calcutta while the central office of the other organisation is at Bangalore. The Goel family as a group of transport companies are having about 600 branches in the various cities in India. Although, the total transport business has been carried on as one Unit of Goel Group of Transport Corporation, three separate entities have been created.

15. It is the further case of the petitioners that in the South Eastern Roadways, there are 55 employees on the rolls of the firm at the relevant period and the employees of the South Eastern Roadways were divided into two groups and were members of two omnibus Unions viz., Carrier Transport Employees Union and Commercial Carrier Road Workers Union. Disgusted with the activities of the said omnibus Unions, the employees founded a union viz., South Eastern

Roadways Workers Union on May 6, 1985 and got it registered with the Registrar of Trade Unions on January 20, 1986 and Shri B.N. Sharma, petitioner No. 2 herein is the General Secretary of the said Union. The respondent management on coming to know of the formation of this Union under the leadership of petitioner No. 2 transferred Shri Sharma from 25 Dr. Suresh Sarkar Road, Calcutta to 134/4, M.G. Road, Calcutta with effect from December 2, 1985 while he was on leave. Shri Sharma received the order of transfer on January 15, 1986 and protested against his transfer on the ground that the same is contrary to his terms of employment. On January 27, 1986 a letter was given to the management for extending recognition to the newly formed union. A charter of demands dated February 5, 1986 was also given to the management. It is alleged that the management withheld the salary of the employees for January 1986 to victimise or persecute or pressurise the employees to leave the membership of the Union. A dispute was raised before the Assistant Labour Commissioner on March 10, 1986 and the matter was fixed for discussion on March 19, 1986. The management declared a lock-out at 25, Dr. Suresh Sarkar Road and also at 134/4, M.G. Road office on March 11, 1986 and April 2, 1986 respectively. A charge-sheet was issued to Shri Sharma on March 4, 1986 to which he replied on March 6, 1986. The management declared closure of the said offices as also at the office at 2, Brabourne Road, Calcutta with effect from August 5, 1986.

16. According to the petitioners, the lock-out was motivated and the subsequent closure declared by the management was vague, unreal and illegal.

17. Paschim Banga Path Paribahan Karmi Parishad also filed a written statement before the learned Tribunal. It was their case that the alleged lock-out and closure is prima facie illegal. That the management did not offer closure benefit to the workmen while declaring the closure.

18. The management filed two separate written statements before the learned Tribunal. One in reply to the statement filed by the petitioners' Union and the other with respect to the statement of case filed by the Karmi Parishad. The case of the management in brief was that each firm has its own identity unconnected with the aspect whether the Goel family is joint or not and that it was not a family business nor the transport companies referred to by the Unions are owned jointly. Each unit is owned by distinct owners run separately, administered and managed separately. The transfer of the petitioner it was stated was valid in law and in accordance with the tripartite industry-wise settlement of 1985.

19. It was the further case of the management that since January, 1986, the workmen at Suresh Sarkar Road, Calcutta started indulging in various acts of indiscipline and in total violation of the settlement of 1985. Despite issuance of notices by the management to resume their normal duties and not to take recourse to acts of indiscipline, criminal intimidation, violence, threat of injury to person, the same had no effect and it became impossible to run the delivery cum godown office, the management had no alternative but to declare a lock-out and

thereafter closure. It was stated that a complete closure was effected with the effect from August 5, 1986 and the same was in due compliance with the provisions of law. The closure, it was asserted is real and bona fide and due to the circumstances beyond control of the management. It was denied that the employer firm carried on business during the period of lock-out and after closure.

20. The contention of Mr. Kalyan Bandhopadhyay, learned advocate for the petitioner that the learned Tribunal has not considered the evidence of the witnesses for the petitioner Union and that the documentary evidence adduced on behalf of the petitioner Union has not been taken note of, is not justified nor tenable. The learned Tribunal in the Award under challenge has set out relevant portions of the evidence oral as also documentary and thereafter proceeded to decide respective issues before it. In deciding the issues, the learned Tribunal has drawn inferences and conclusion from the said evidence. Merely, because in the conclusion arrived at by the Tribunal pointed reference has not been made to the evidence, though as already noticed above, the relevant evidence has been taken note in the earlier part of its Award and it is based upon the inferences and conclusions drawn therefrom that the Tribunal returned the findings on the respective issues. For that reason, the Award cannot be said to be either perverse or biased or one sided.

21. Point No. 1. - Pertaining to transfer of Shri B.N. Sharma, the case of the Union is that the transfer was effected to victimise Shri Sharma for starting the new Union whereas the claim of the management was that it was due to exigencies of work and Shri Sharma was not a trade Union leader nor the sole employee who was transferred at that time. The distance between 25, Dr. Suresh Sarkar Road from where Mr. Sharma was transferred to the office at Mahatma Gandhi Road is only 2 kilometers according to Dr. W. 1 and 5 k.m. according to O.P.W. 1. The Tribunal after noticing that other four (4) employees who were transferred along with Mr. Sharma had complied with the order of transfer and that there was a provision under Clause (10) of the Tripartite Settlement dated June 28, 1977 whereby an employee can be transferred within Calcutta from one office to another, upheld the order of transfer.

22. It was contended that reliance upon the tripartite settlement dated June 28, 1977 was not proper as in the statement of claim filed by the management, there was no reference to the said settlement dated June 28, 1977. That the management had relied upon the tripartite settlement of September 21, 1985 which contained no such provision.

23. Mr. Partha Sarathi Sengupta countered the said submissions by submitting that the settlement of June 28, 1977 was tendered in evidence and marked as an Exhibit-16 without objection and it was, therefore, no longer open to the petitioner to question the admissibility of the said document (Ext. 16). Reliance for the said submissions was made upon the Supreme Court judgment in P.C. Purushothama Reddiar Vs. S. Perumal, wherein it was held that it is not open to a party to object to the admissibility of the documents which are marked as

exhibits without any objection from such party. Once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be conclusive evidence.

24. The settlement dated June 28, 1977 was one entered into by three Transport Companies including the respondent management and their workmen represented by as many as six Unions. In Clause (10) of the said settlement, it was agreed that for smooth running of business workmen may be shifted into any office, godown or a branch within Calcutta belonging to the concerned establishment.

25. The settlement dated September 21, 1985 is one entered into by the Transport undertakings in West Bengal and the workmen represented by various Unions. In Clause (3) of the said settlement, it has been specifically stated that the points which are not covered under that agreement but are settled under earlier industry wise tripartite settlement will continue to be in force during the tenure of that settlement.

26. The reference to the "earlier industry-wise tripartite settlement" is to the aforestated settlement dated June 28, 1977.

27. In the circumstances, the contention of the petitioners that the tripartite settlement dated June 28, 1977 had lapsed and that it cannot be taken into consideration, has to be rejected. In respect of points not covered by the settlement dated September 21, 1985 like the transfer of employees within Calcutta, the Clause (10) of the industry-wise settlement dated June 28, 1977 was specifically made applicable and in force by virtue of Clause (3) of the settlement dated September 21, 1985.

28. A contention was also sought to be raised by the learned counsel for the petitioners that in terms of the letter of appointment, Ext. C/1, Mr. Sharma is not liable to be transferred and that the Tribunal was not justified in ignoring the same or treating the same as not having been proved. There is ample evidence on record and more particularly of the witnesses who deposed on behalf of the workmen, they have stated that they have not been issued any such letter of appointment. Shri Sharma (O.P.W. 1) in his cross-examination has admitted that this Union is not in a position to produce any documents to show that Shri B.P. Agarwal issued letter of appointment to any of the workmen of the firm.

29. Such being the evidence on record, I am not inclined to interfere with the conclusion as arrived at by the Tribunal, the same can neither be characterised as either perverse or suffering from any error of law apparent on the face of the record.

30. With respect to issue No. 2 relating to lock-out the Tribunal came to the conclusion that the evidence on record disclosed that from January, 1986, the workmen started indulging in various acts of indiscipline. This was after the transfer order was issued to Shri B.N. Sharma. The declaration of lock-out at the

godown at Suresh Sarkar Road is with the effect from March 11, 1986. The lock-out was declared at 134/4, M.G. Road with the effect from April 8, 1986. The Tribunal based on evidence on record held that notices of lock-out were issued as per law. The indiscipline was rampant. The claim of the Union that the agitation was on account of non-payment of salaries for the month of February, 1986 was disbelieved by the learned Tribunal for the reason that the month of February, 1986 did not come to an end for payment of salary for that month and the agitation had accelerated, even to the Mahatma Gandhi Road Office.

31. There is evidence on record that the notices were displayed on the notice Board on February 7, 1986 and February 10, 1986 requesting workers to report for duty without further delay. Copies were also issued to Labour Commissioner and to Honorary Secretary, Calcutta Goods Transport Corporation, Shri B.N. Sharma and other workmen met P. W. 1 and demanded explanation from him on February 25, 1986 as to why he had been issuing notices and displaying on notice board and not paying attention to their demands. Workmen raised slogans which were provocative in nature and threatened P.W. 1. Exhibit-24 is a letter dated February 25, 1986 addressed to the Police Station and Ext. 26 is a notice dated February 27, 1986 displayed on the notice board and also copies thereof sent to Labour Commissioner and Deputy Labour Commissioner-cum-Conciliation Officer.

32. The Tribunal has referred to and relied upon the documentary evidence Exts. 21, 24, 26, 28, 29, 31, 32, 33, 34, 39 and 41 with regard to the disciplinary activities of the workmen. The workmen were indulging in misbehaviour, harassing customers, deliberately adopting dilatory tactics in releasing consignment to the customers.

33. The findings as also the conclusion returned by the learned Tribunal with respect to the issue of declaration of lock-out at the two offices does not suffer from any legal infirmity warranting any interference by this Court.

Issue No. 3

34. It is important to note that the question as referred to the Tribunal for its adjudication was not as to the validity or justification for the closure but the question was limited to examining whether the closure of the establishments at the two offices was real.

35. The evidence based on which it can be said that the closure was declared have been taken note of by the Tribunal which are with respect to the violent activities of the workmen on May 8, 1986 causing hurt to P.W.-1 and damaging the furniture etc. at the office followed by criminal prosecution.

36. The evidence on record, as taken note of by the learned Tribunal also shows that notices of closure were issued to the appropriate authorities and the trade licence of the firm in Calcutta was not renewed. The Provident Fund Commissioner, Professional Tax Officer, Employment Exchange authorities were

informed of the closure as also the controlling authority under the Payment of Gratuity Act in Calcutta was also informed. Out of the 53 workmen, 49 received their closure compensation pursuant to the notices, issued in that behalf.

37. Before the learned Tribunal certain xerox copies of challans dated June 30, 1989 (Marked for identification purpose as Z/1, Z/2 and Z/2 (b) were relied upon in support of their claim that the business was being carried on. The said challans are lorry challans issued from various places outside Calcutta to various destinations. With regard to the mode of payment, it is stated in the challan that the payment is to be made at Calcutta. From this, it is sought to be contended that the closure was not real and the business was being carried on. The learned Tribunal did not accept the secondary evidence. However, the learned Tribunal observed that there was no indication from the said exhibits that the goods came to the godown of the respondent management. The said exhibits indicated that the goods were to be delivered to the consignee direct against payment.

38. As to the contention of the petitioner Union that the business of the firm is carried on through Road Transport Corporation which has its office at 134/4, M.G. Road, the learned Tribunal, observed that this is not an establishment of South Eastern Roadways. Each firm has got separate entity and that the Road Transport Corporation was already in existence and was having its office at Calcutta from before. It was not as though on, the closure of the respondent firm, the partners of the closed firm have set up the said business of Road Transport Corporation. The contention of the workmen Union that the closure was just fake was rejected by the learned Tribunal.

39. The aforesaid conclusion arrived at by the learned Tribunal also does not suffer from any legal infirmity.

40. In the light of the definition of "closure" in Section 2(oo) of the Act and the judgment of the Supreme Court in Kalinga Tubes Ltd. Vs. Their Workmen, it is difficult to accede to the contention that the entire respondent company should be dissolved or wound up to constitute "closure".

41. In view of the above, it may not be necessary to consider the ancillary question raised by the respondents before the learned Tribunal and as upheld by it that the petitioner Union had no locus standi to represent the workmen. The matter was considered upon merits and the Union had participated in the said adjudication. Therefore, no useful purpose would be served by considering that ancillary issue any further.

In the circumstances, the writ petition must fail and is accordingly dismissed, however, without any order as to costs.