

(2005) 02 CAL CK 0018

In the Calcutta High Court

Case No : A.P.O. No. 434 of 1999 and W.P. No. 2880 of 1993

Workmen rep. by South Eastern Roadways Workmen's Union
and Another

APPELLANT

Vs

VIII Industrial Tribunal and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 27
Industrial Disputes Act, 1947 — Section 10(1), 18, 25FFA, 25FFF

Citation : (2006) 2 CHN 166 : (2005) 105 FLR 395 : (2005) 2 LLJ 1020

Hon'ble Judges : Soumitra Pal, J; D.K. Seth, J

Bench : Division Bench

Advocate : Raja Basu Chowdhury, A. Mitra and Santosh Kumar Roy, for the
Appellant; D.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.

The Scope:

1. This appeal arises out of the judgment and order dated May 7, 1999 passed by the learned single Judge in Matter No. 2880 of 1993 dismissing the writ petition arising out of the Award dated June 30, 1993 passed by the learned 8th Industrial Tribunal, West Bengal. Three issues were referred to the Tribunal for being adjudicated upon, namely, (i) Whether order dated November 28, 1985 transferring Shri B.N. Sharma from Fntally to Burrabazar unit is justified? To what relief, if any, is he entitled? (ii) Whether lock-out of the establishment at 25, Dr. Suresh Sarkar Road, Calcutta with effect from March 11, 1986 and lock-out from April 8, 1986 are justified? To what relief if any, are the workmen entitled? and (iii) Whether the closure of the establishment at 25 Dr. Suresh Sarkar Road, Calcutta and 134/4, M.G. Road, Calcutta-7 is real? To what relief, if any, are the workmen entitled? All these issues were answered in favour of the employer. This was challenged before the learned single Judge wherein the said 1

Award was affirmed.

Order 41, Rule 11, CPC: Admissibility of documents: Its effects:

2. Mr. Raja Basu Chowdhury, learned counsel appearing for the appellant, points out that the closure was not real. In order to support his contention, an application under Order 41, Rule 27 of the CPC was filed by the appellant. This was allowed by the 2 Division Bench on December 8, 2004. Copies of these documents, which were sought to be adduced by way of additional evidence, are annexed with the application. We rely upon these documents as copies of originals. Mr. Ghosh also does not dispute the same. Relying on these documents, Mr. Basu Chowdhury contended that the closure was a camouflage and that the employer was continuing its business, which is apparent from these very documents. Mr. Ghosh, on the other hand, contends that these documents were produced only in 2001. There was no attempt to produce any document in between the date of reference namely, January 30, 1988 till the date of the Award dated June 30, 1993. In our view, no attempt was made to produce these documents before the learned single Judge, who decided the writ petition on May 7, 1999. These documents have been produced only in the year 2004 though the appeal was preferred in 1999. According to Mr. Ghosh, these subsequent documents cannot be relied upon for the purpose of deciding an issue related to the affairs that existed in 1986. He relies on the decision in *Nicks (India) Tools Vs. Ram Surat and Another*, .

3. In *Nicks (India) Tools (supra)*, the Apex Court had held that for the first time documents produced before the Writ Court by way of additional evidence would not be considered by the High Court since those were brought in a manner not known to law. But we do not think that this principle could be applied in the present case where the documents have been brought in the manner recognised in law, namely, Order 41, Rule 27 of the CPC (CPC), which permitted adducing of additional evidence. Therefore, we are not inclined to throw out those documents on the ground of its inadmissibility. On the other hand, we would like to consider those documents on its merits and examine as to whether the evidence laid out of those documents could be applied in the present case in order to hold that the closure was not real but a camouflage.

4. Documents which are produced before this Court are related to period long after the closure was declared which shows that some of the employees of the organisation are being paid their salary and are also being subjected to the provision of the Employees' State Insurance Act and the contribution therefore are being paid to the appropriate authority. These documents do not relate to a period immediately after the closure. In any event, no document was produced, as rightly pointed out by Mr. Ghosh, during the course of the adjudication of the industrial dispute before the learned Tribunal nor any attempt was made to produce any document before the Writ Court and none of the documents produced relate to a period which is close to the date of closure. There is no bar in opening office subsequently and once a closure is declared, it does not operate

for all time to come and opening of the business after a long gap would not invalidate the closure, if it was declared validly.

5. Having gone through these documents, we do not find that any of these documents could indicate that the employer did not close down the unit and continued with its business immediately after the closure or within a reasonable proximity after the closure. Therefore, these documents, even if admitted in evidence, would not lead us to hold that the business of the employer continued despite closure.

The closure : Whether real:

6. The learned Tribunal and the Writ Court have found that the closure was real. The facts leading to the closure was preceded by a lock-out during which the agitation of the workmen aggravated prompting the employer to declare the closure by a notice issued on May 27, 1986 u/s 25-FFA with effect from August 5, 1986 which is after 60 days from the date of a notice. On July 29, 1986, another notice was issued asking the employees to collect their dues between July 29, 1986 and August 5, 1986 which is apparent from the pleadings at page 74 of the Paper Book. It, however, appears from page 338 of the Paper Book that the learned Tribunal had found that out of the 53 workmen, 49 had received their closure compensation and 4 did not.

7. Mr. Basu Chowdhury had pointed out that there was a violation of the first proviso introduced by the West Bengal Amendment in 1980 providing that no closure should be declared without payment of closure: compensation which is a condition precedent for closure. According to him, closure compensation was not paid but was only offered. In other words, by the notice dated July 29, 1986 the workmen were asked to collect the closure compensation but it was not paid and, as such by reason of infraction of Section 25-FFF the declaration of closure was not valid.

8. This question cannot be gone into in view of the scope and ambit of reference, which was the only question so far as closure is concerned as to whether it was real or not. Whether the closure was justified or closure was invalid was not the question, which was referred to. The Tribunal while adjudicating the dispute cannot travel beyond the scope of the reference. It is only the question or the dispute that has been referred to the Tribunal by the Government the Tribunal has to confine its jurisdiction. The jurisdiction to adjudicate is conferred on the Tribunal only by reason of an order of reference u/s 10(1) of the Industrial Disputes Act, 1947. Therefore, neither the Tribunal nor the Court can consider issues, which are not referred to the Tribunal.

9. Be that as it may, it appears that the materials on record were examined by the learned Tribunal as well as by the learned Writ Court. Learned single Judge on facts recorded that there was no infraction of the first proviso introduced by the West Bengal amendment in the Industrial Disputes Act and that the compensation was received by 49 out of the 53 employees. Non- receipt of the

compensation by four would mean that these four workmen had declined to receive the compensation. Even if four had not received the compensation the same would not invalidate the declaration of closure when 49 out of 53 had received the closure compensation. Therefore, we are unable to persuade ourselves to agree with the contention of Mr. Basu Chowdhury.

10. In the absence of any material, as has been found by the learned Tribunal, which is the ultimate fact finding authority, we are not inclined to hold otherwise on the strength of the documents disclosed before us because of the reasons given hereinbefore.

Closure : Justifiability and validity?

11. Mr. Basu Chowdhury had pointed out that the lock-out was not declared in accordance with law. This was also discussed in detail by the learned Tribunal and had recorded that there were situations, which made the Company declare lock-out since it was unable to carry on its business, as it may be evident from the Award at pages 330 to 335. From the said finding, it appears that there was workmen's agitation, which compelled the employer to declare the lock-out which continued to aggravate resulting into an invasion of the other office of the employer compelling the employer to decide to close down. We do not find any reason to interfere with the finding of facts arrived at by the learned Tribunal, which had found that the lock-out was justified and answered the question No. 2 in favour of the employer.

12. Mr. Basu Chowdhury then points out that one of the workmen named in the order of reference, namely, B.N. Sharma was transferred from Suresh Sarkar Road to Burrabazar. The learned Tribunal had found at page 328 of the Paper book that the distance between the two offices is 2 Kms. and that was permitted in terms of clause 10 of the tripartite settlement (Ext. 16) arrived at on June 28, 1977 which provided that the union/workmen agree that for smooth running of business workmen may be shifted into any office or branch office within Calcutta belonging to the establishment. Mr. Basu Chowdhury points out that in the appointment letter there was no clause permitting the employer to transfer the employee/workman to any other establishment. It appears that the Tripartite Settlement (Exhibit 16) is binding on the workmen by reason of Section 18 of the Industrial Disputes Act. Therefore, any condition, which might not have been included in the appointment letter, would stand modified by reason of agreement between the employee or employer, even if B.N. Sharma may not be a party to such agreement. The agreement being a tripartite one concluded in presence of the Government by reason of Section 18 would be binding upon him and the service condition would be governed thereby. In the circumstances, the learned Tribunal had answered this question in favour of the employer.

13. Mr. Basu Chowdhury had relied on the decision in the case of General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and Others, in order to contend that in case a closed unit is re-opened, the erstwhile employees are to be given

employment and in this case there was no such attempt. We do not think that this decision would help Mr. Basu Chowdhury in view of the distinguishing facts of the present case where there was no proof that this unit was re- opened till the Award was passed.

Order:

14. In case the closure compensation has not been paid to these four employees the same may be paid in accordance with law in terms of Section 25-FFA within a period of two months from date together with interest calculated at the rate of 6% per annum simple.

15. We do not find any reason to interfere with any of the findings arrived at either by the learned Tribunal or as affirmed by the learned single Judge.

16. Before we part with, we must i appreciate the clarity and brevity with which Mr. Basu Chowdhury and Mr. Ghosh had argued the case.

17. The appeal, therefore, fails and is accordingly dismissed.

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

19. Parties to act on a xerox signed copy I of this dictated order on the usual undertaking.

Soumitra Pal, J.

20. I agree.