
D.P. Sharaf Vs S.E.C.L. Through General Manager And Ors

WA No. 365 Of 2019

Court: Chhattisgarh High Court

Date of Decision: Sept. 3, 2019

Acts Referred:

Constitution Of India, 1950 – Article 226, 226(3), 226(3)(b)

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: D.P. Saraf, V.R. Tiwari, Vinod Deshmukh

Final Decision: Disposed Of

Judgement

Parth Prateem Sahu, J

1. The appellant has filed the instant appeal challenging the impugned order dated 24-06-2019 passed by learned single Judge, whereby learned single

Judge declined to entertain the petition and dismissed the same.

2. Facts of the case in nutshell are that the appellant has filed proceedings before the labour Court in a representative capacity wherein after

appearance of non-applicants therein i.e. S.E.C.L. moved an application before the labour Court for allowing the second party therein i.e. employer to

be represented through an advocate. The said WA 365 of 2019 application for permission to represent through advocate has been dismissed.

3. The said order of the labour Court was made to challenge by the respondents-S.E.C.L. before the High Court in WP(L) No. 67/2019. The said writ

petition came up for hearing before the learned single Judge on 07-03-2019 and after hearing learned counsel for the petitioner therein, while issuing

notice to the respondent No. 1/appellant, had passed an order of stay of further proceedings of the case No. 04/I.D. Act/2017 (Reference) till next

date of hearing.

4. The appellant has filed an application on 05-04-2019 under Article 226(3) of the Constitution of India for vacating the stay order passed by learned

single Judge in WPL No. 67/2019 and subsequently on 05-07-2019 a preliminary objection was also raised by the respondent No. 1/appellant by filing

petition.

5. The appellant in the proceedings dated 02-05-2019 when the labour Court was adjourning the case in pursuance to the interim order of stay dated

07-03-2019 for further date, made a mention that the interim order of stay dated 07-03-2019 has lost its effect itself in pursuance to the provisions of

Article 226(3)(b) of the Constitution of India because on 05-04-2019, he has moved application before the High Court for vacating stay order and also

placed acknowledgement, he also made a mention that the provisions of the Constitution provides that if the application for vacating stay could not be

heard within a period of 14 days then it losses its effect automatically.

6. The learned Court after considering the records, arguments of the order dated 07-03-2019 had adjourned the case for 06-07-2019 awaiting the

further orders of the High Court. The aforementioned order dated 02-05-2019 passed by labour Court was made to challenge in a separate writ

petition before the High Court which was registered as WPC 1961/2019. The learned single Judge while hearing the matter, challenging the order

dated 02-05-2019, dismissed the writ petition by observing as under:-

6. ... In any case the nucleus of the dispute is from the reference which is pending adjudication before the Labour Court under the Industrial Dispute

Act. In such dispute against the order of Labour Court writ petition was preferred. In such writ petition interim ex parte order was passed on

07/03/2019. Consequently the series of cause of action is one and same for which already a lis is pending before the Court. The Court are bound to

observe the judicial discipline beside the petition must be maintainable before the Court to decide an issue. The order passed by the cordinate Bench

cannot be interpreted or interfered by other Bench as it would led to destroy the judicial system. Since WPL No. 67 of 2019 is pending, the grievance

of the petitioner can be very well agitated in such petition wherein all the contention of the petitioner can be put forth which would be for the

consideration of the concerned Court. At this stage, any judicial verdict by this Court would amount to interference with the order dated 07/03/2019

passed by other Bench in different case. In view of the facts as aforesaid I am not inclined to entertain the petition.

7. Learned counsel for the appellant submits that challenging the order dated 02-05-2019, appellant has filed the petition under Article 226 of the

Constitution of India by mentioning Rules 29 & 32(2)(i) of the High Court Rules and Orders for placing his petition before the full Bench, but the

registry listed his case before the learned single Judge. He submits that learned single Judge ought to have committed error in not considering the

prayers made by him.

8. Learned counsel appearing for respondents submits that the learned labour Court has rightly passed the impugned order, as on the date of hearing,

appellant himself was present and made submission by placing the acknowledgement by filing the application only that by virtue of the expiry of the

period of 14 days from the filing of the application for vacating stay, the impugned order has lost its efficacy, as there was no material whether the

case was taken up or not, the labour Court rightly adjourned the case awaiting the order of the Hon'ble High Court in WP(L) No. 67/2019.

9. In view of the aforementioned argument, they have supported the impugned order passed by learned writ Court in WP(C) No. 1961/2019. The

constitutional mandate, as provided under Article 226(3)(b) of the Constitution of India, cannot be questioned and it need not be required any

interpretation which is very specific and clear.

10. On 02/05/2019 which is the order whereby the learned labour Court adjourned the case for further date, when the appellant brought to the notice to

the labour Court orally by placing the acknowledgement of the application, neither there was any further material available before it nor the counsel

for the respondents was present, the appellant neither submitted any petition supported by affidavit making prayer to proceed nor he placed any order

passed by the High Court.

11. It is not the case that after expiry of 14 days from filing the application for vacating the ex parte stay, no further order of stay can be passed by the

learned writ Court. Learned writ Court has all the powers and jurisdiction to extend earlier stay order granted by it after hearing the parties or to pass

a fresh interim order on the pending application or fresh application.

12. The Constitutional mandate under Article 226(3) is very specific and clear that as soon as the party against whom interim order is passed without

furnishing him copy of petition and giving opportunity of hearing, file an application for vacating of such interim order; that application is to be disposed

of by the High Court otherwise consequence is to follow. We have also called for the records of WP(C) 67/2019 and perusal of which shows that the

registry did not list the application under Article 226(3) of the Constitution of India for its hearing before the Court.

13. From the facts of the case, it is apparent that due to clerical error of the listing clerk, the application filed on 05-04-2019 for vacating stay of the

order dated 07-03-2019 could not be listed for its hearing before learned writ Court.

14. In view of the above observation, we do not find any error in the order passed by learned single Judge in WP(C) No. 1961/2019. In view of the

constitutional mandate provided under the Constitution of India, we direct that WP(L) No. 67/2019 to be listed forthwith to the concerned Court as per

the roster. We further direct the registry to list all the applications, filed under the provisions of Article 226(3)(b) of the Constitution of India,

immediately after receiving the same for its hearing before the Court. Copy of the order be circulated to all the dealing assistance/listing clerks in all

sections of the registry who deals with the records of writ petition.

15. In view of above, the appeal is disposed of with the aforementioned terms and directions.