

(2009) 03 CAL CK 0002

Calcutta High Court

Case No: A.P.O. No. 331 of 2008, W.P. No. 2098 of 2002 with A.P.O. No. 146 of 2008, W.P. No. of 2098 of 2002

Samir Sarkar

APPELLANT

Vs

STP Ltd. and Others
 STP
Ltd. Vs First Industrial Tribunal
and Others

RESPONDENT

Date of Decision: March 23, 2009

Acts Referred:

- Contempt of Courts Act, 1971 - Section 2(c)
- Industrial Disputes Act, 1947 - Section 10, 17(b), 17B, 2A

Hon'ble Judges: S.K. Gupta, J; Pratap Kumar Ray, J

Bench: Division Bench

Advocate: Nayan Rakshit for the Appellant in A.P.O. No. 331 of 2008, W.P. No. 2098 of 2002, Mr. Soumya Majumdar and Mr. Saroj Tulsian for the Appellant A.P.O. No. 146 of 2008, W.P. No. of 2098 of 2002, for the Appellant; Soumya Majumdar and Mr. Saroj Tulsian for the Respondent in A.P.O. No. 331 of 2008, W.P. No. 2098 of 2002, Mr. A. Das for the State in A.P.O. No. 331 of 2008, W.P. No. 2098 of 2002, Mr. Nayan Rakshit for the Respondent A.P.O. No. 146 of 2008, W.P. No. of 2098 of 2002, Mr. A. Das for the State A.P.O. No. 146 of 2008, W.P. No. of 2098 of 2002, for the Respondent

Judgement

Pratap Kumar Ray, J.

Heard the learned advocates appearing for the parties in both the appeals.

2. Challenging the judgment and order dated February 8, 2008, passed in G.A. No.3991 of 2002, read with G.A. No.1594 of 2006, in connection with writ petition No.2098 of 2002, the appeal being APO No.146 of 2008 has been preferred by the company STP Limited.

3. The judgment under appeal arose out of consideration of the application of recalling the order dated October 8, 2002, passed in G.A. No.3991 of 2002, being an

application filed u/s 17B of the Industrial Disputes Act by the workman. On October 8, 2002, when the writ petition was moved assailing the award passed by the First Industrial Tribunal, West Bengal, directing reinstatement in service of the workman, along with the application filed by the workman seeking relief u/s 17B of the Industrial Disputes Act, the following order was passed:

"The Court: Having heard the learned counsel appearing for the parties and considering the facts and circumstances of the case, I am of the view that this petition should be decided only after filing of affidavits.

Accordingly, the respondents are directed to file Affidavit-in-Opposition within 2 weeks after long vacation. Reply, thereto, if any, be filed within one week thereafter.

Let this matter be listed for hearing before the appropriate Bench on 3rd of December, 2002.

Let there be an interim order in terms of prayer (h) of the writ petition provided the petitioner company makes necessary payment to the respondent workmen in terms of section 17(b) of the Industrial Disputes Act from the months of September, 2002 until further orders of this Court. The petitioner company will make the payment for the month of September, 2002 within 21st October, 2002 and the payment for the subsequent months in terms of this order should be made within 7th of each succeeding month.

In default of making necessary payment in terms of this order the interim order will stand automatically vacated.

The affidavit in opposition filed on behalf of the petitioner company in connection with the application u/s 17(b) of the Industrial Disputes Act in Court today be kept on records.

Let Affidavit in Reply to the said affidavit in opposition be filed by the workmen concerned within 2 weeks after re-opening of this Court.

Let the application filed by the respondent workmen u/s 17(b) of the Industrial Disputes Act be listed along with the main writ petition on 3rd of December, 2002 before the appropriate Bench.

All parties are to act on a Xerox signed copy of this Dictated Order on the usual undertakings."

4. Subsequently, the company/writ petitioner moved an application seeking recalling of the order dated October 8, 2002 as aforesaid. In that application, the following prayers were made:

"a. Direction be made upon Universal Surface Protection Pvt. Ltd. of No.2, Bright Street, Kolkata-700019 to produce the service records of the Respondent No.2 and appropriate direction be made against the Respondent No.2.

b. Recall the order dated 8th October 2002 passed by His Lordship the Hon"ble Justice Pranab Kumar Chattopadhyay in G.A. No.3991 of 2002 in connection with W.P. No.2098 of 2002 to the extent of direction given for making payment by the Company to the Respondent No.2 u/s 17B of the I.D. Act, 1947 on the ground of the said order having been obtained by the Respondent No.2 by fraud and/or on the basis of misleading/incorrect statement;

c. Direct the Respondent No.2 to refund the amount of Rs.2,09,220/- which your petitioner company had already paid to him for the period from September, 2002 to April, 2006 in terms of the order dated 8th October 2002 @Rs.4755/- per month passed in connection with G.A. No.3991 of 2002 immediately along with interest @18% p.a.

d. Appropriate action be taken against the Respondent No.2 for Criminal contempt by affirming false affidavit and fraudulent representation before the Hon"ble Court.

e. Grant leave to your petitioners to initiate appropriate action against the Respondent No.2 for making false and fraudulent representation before this Hon"ble Court for getting financial benefit illegally.

f. Pass an interim order staying the operation of the order dated 8th October 2002 pending in G.A. No.3991 of 2002 to the extent of directing the petitioner company to go on making payment of the amount in terms of section 17B of the Industrial Disputes Act, 1947 month by month, till the disposal of this application.

g. Ad-interim order in terms of prayers (a) to (e) above.

h. Pass such further and other order and/or orders, direction and/or directions as this Hon"ble Court may deem fit and proper;"

5. The impugned judgment under appeal reads such:

"The Court: this is an application for recalling of the order dated 8th October, 2002 passed in G.A. No.3991 of 2002.

Following a dispute over the issue of alleged illegal termination of the workman reference was made u/s 10 read with section 2A of Industrial Dispute Act to the Industrial Tribunal. On hearing the submissions of the respective parties and considering the materials on record, the learned Tribunal passed the award, directing reinstatement of the concerned workman with all back wages. Challenging the award, the petitioner filed the writ with a separate application for stay of the impugned award. On hearing the submissions of the counsels for the respective parties and considering the facts and circumstances of the case, the learned single Judge directed the respondents to file the A.O. within two weeks after the long vacation and reply thereto within one week thereafter. The learned single Judge also passed an interim order directing the petitioners to pay interim wages to the workman in terms of section 17(b) of the West Bengal Industrial Dispute Act.

Dissatisfied with the aforesaid interim order wherein direction was given to the petitioners to pay interim wages to the respondent No.2 Samir Sarkar in terms of section 17(b) of the Industrial Dispute Act, the petitioners have filed the instant application for recall of the aforesaid order.

Appearing on behalf of the petitioners, Mr. Kalyan Banerjee, learned senior counsel has submitted that in directing the payment of interim wages as per provision of section 17(b) of the Industrial Dispute Act, the learned single Judge did not take into account that the respondent No.2 had been in gainful employment with M/s. Universal Surface Protection Pvt. Ltd. having its registered office at 2, Bright Street. The learned Court it is submitted was swayed by the affidavit to the effect that the workman had been without employment since the date of passing of the award by the tribunal. The report of the Special Officer having falsified his claim that he had been without employment after the issuance of the award, the direction regarding payment of interim wages in terms of the provision of section 17(b) of the West Bengal Industrial Dispute Act should be recalled as contended by Mr. Banerjee.

Contending that the respondent No.2 had played fraud on the Court, Mr. Banerjee has sought intervention of the Court by way of issuance of the contempt rule against the respondent No.2. referring to the case of [Dhananjay Sharma Vs. State of Haryana and Others](#), it is submitted that filing of false affidavit amounts to contempt calling for stern action. Even belated apologies to escape punishment should not be accepted, as contended by Mr. Banerjee. Mr. Banerjee has also urged restoration of all the benefits in view of the fraud being practised by respondent No.2. Mr. Banerjee has also cited the case of [Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others](#), to vindicate his stand that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby.

Assailing the contention that acceptance for employment for a limited period would not deprive the concerned employee of his right to claim relief as provided u/s 17(b) of the I.D. Act Mr. Banerjee has argued that factum of fraud having been discerned, no equitable relief should be given. Since the report of the Special Officer engaged by the Court negates the contention that the concerned workman had been living on without any employment, the direction for interim wages should be recalled. In this connection, Mr. Banerjee has placed strong reliance on the case of [Administrator Kamala Nehru Memorial Hospital Vs. Vinod Kumar](#), to substantiate his stand that the flimsy plea that because of compulsion of the unemployment, the workman will have no other option but to accept other jobs for a short period is not acceptable at all. Such contentions, as submitted by Mr. Banerjee, are clearly contrary to what has been provided for in section 17(b) of the Industrial Dispute Act. Reliance has also been placed on the observation of the apex court in A.V. Papayya Sastry & Ors. v. Govt. of A.P. & Ors., reported in 2007 AIR SCW 2212 to underline the aspect that intervention of the Court can only be solicited where justice, equity and

good conscience require it.

Appearing on behalf of the concerned workman, Mr. R.N. Majumdar learned senior counsel has argue that since no remuneration had ever been received by the workman during the intervening period, the workman is entitled to receive the full wages drawn by him. Nowhere it has been indicated in the report of the Special Officer that the respondent No.2 had received remuneration during the pendency of the proceeding, All that has been indicated in the report is that the concerned workman was attached to M/s. Universal Surface Protection Pvt. Ltd. for a very short period only. Rendering service without remuneration would not disentitle him of receiving wages in terms of section 17(b) of the Industrial Dispute Act. Mr. Banerjee has submitted that in the event of the court accepting the proposition that the concerned workman had received remuneration in lieu of his service, the remuneration so received by him may be adjusted against his due. Outright rejection of the application is not sustainable in law, as contended by Mr. Banerjee.

Section 17(b) of the Industrial Disputes Act provides:

"Where in any case, a labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period of part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be".

Mr. Ayan Banerjee, learned counsel, was appointed Special Officer to investigate into the matter and to submit a report as to whether the respondent No.2 Sri Samir Sarkar was in gainful employment with M/s. Universal Surface Protection Pvt. Ltd., having its registered office at 2, Bright Street, Calcutta-19. Mr. Banerjee made a thorough investigation to ascertain the real state of affairs. In his exhausted report the learned Special Officer had mentioned that he had the occasion to meet one Mr. Manohar who happened to be the Director of M/s. Universal Surface Protection Pvt. Ltd. Mr. Manohar disowned the fact that Mr. Samir Sarkar was a staff of their concern. He also disowned the fact that his name was on the payroll of their concern. However, Mr. Manohar did acknowledge that Mr. Samir Sarkar visited their office for the preparations of paper for bank loan. He also acknowledged that the name of Mr. Sarkar was shown in the payment sheets. Mr. Manohar for the best

reasons known to him declined to hand over all the relevant documents to the Special officer. It is quite clear that Mr. Samir Sarkar did render service for M/s. Universal Surface Protection Pvt. Ltd. His name was also recorded in the payment sheets. Extracts of the payment sheets have also been furnished. The documents confirm that the name of Mr. Samir Sarkar was recorded in the payment sheets. There is a clear indication that Mr. Samir Sarkar did receive a fixed amount of Rs.5270/- per month by way of remuneration from the aforesaid concern. It transpires from the record that more than two lakhs had already been paid as arrear in favour of Mr. Sarkar. The amount so paid by the petitioner M/s. STP Ltd. in favour of the respondent No.2 is required to be refunded or readjusted as the case may be. In view of the disclosure of the fact that respondent No.2 had received substantial amount from M/s. Universal Surface Protection Pvt. Ltd. for a certain period of time, the direction upon the petitioner STP Ltd. for regular payment of wages in favour of the respondent No.2 is required to be recalled. There is substantial merit for recall of the order as to payment in view of the revelation and disclosure of the fact that during the pendency of the proceeding the concerned workman did receive remuneration. Accordingly in recalling the order dated 8th October 2002 in G.A. 3991 of 2001, it is hereby directed that the operation of the award dated 26th April 2002 passed by the Industrial Tribunal, First Industrial Tribunal, West Bengal in Case No. VIII in 91/99 would be stayed till the disposal of the application u/s 17(b) of the Industrial Dispute Act. The earlier direction for payment of interim wages is hereby recalled. The application being G.A.1594 of 2006 is disposed of with the aforesaid direction as recorded hereinabove. Urgent Xerox certified copies if applied for are to be supplied."

6. The appellant is aggrieved by the said judgment as the learned trial Judge did not pass any order granting relief in terms of prayers (c), (d) and (e) of the said application for recalling as already quoted above.

7. On perusal it appears that the learned trial Judge believed the salary sheets as true which were submitted for the years 2001-2003 to recall the order by which as an interim measure Court directed an order of payments of last pay drawn in terms of section 17B of the Industrial Dispute Act. The provision u/s 17B of the said Act seeking relief thereof for payments of the last pay drawn/wages last drawn is a beneficial legislation as introduced w.e.f. 21st October, 1984 in view of the particular reason that the establishments and/or the companies frequently were using the machinery of the High Court to stay the award of reinstatement passed by the Industrial Tribunal for which the workmen used to face economic suffering till the finality of the writ application or the appeal therefrom including the Special Leave Petition. Some time the litigation spread over many years resulting the pecuniary suffering of the poor workman concerned. To remedy that problem as faced by the workman during the pendency of any litigation assailing the award, section 17B was introduced with the object to pass a direction to pay the last wages as drawn as a

condition precedent of stay of the award of reinstatement under challenge. But that is not an automatic process. It requires an affidavit in connection with the application u/s 17B of the said Act by the workman concerned contending inter alia that he was not employed in any establishment. Section 17B of the said Act reads such:

"17B. Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of a High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

8. From the application u/s 17B filed by the workmen before the learned trial Judge, it appears from paragraph 9 that he averred his working status as unemployed. This affidavit was affirmed as to true to his knowledge on 30th September, 2002. Said paragraph 9 reads such:

It is stated further that applicant still unemployed and he has to maintained a big family with the nearest relatives and well wishers.

9. Subsequently, when the recalling application was filed by the company taking a positive stand that the workman was already employed in an establishment, by detailing particulars thereof, an affidavit-in-opposition of the said application was filed by contending inter alia that the employer could not be able to prove that the workman was gainfully employed. Subsequently in the application for recalling of the order, a supplementary affidavit filed by the company, the present appellant, annexing the pay slips for the years 2001-2003 to prove that the workman was receiving salary to the extent of Rs.4,950/- per month from the Universal Surface Protection Private Limited having its office at 2, Bright Street, Calcutta - 700 019. From the said pay slips as annexed and which are also annexures in the paper book at pages 97 to 120, it appears that the Professional Tax was deducted from the said salary and the house rent allowance also was paid to the workman in addition to his pay as aforesaid. All those pay slips were signed by the Director of the said establishment and admittedly those pay slips were made in hand writing by the workman as contended in the supplementary affidavit and no reply thereof was filed denying that fact. The Court appointed a Special Officer to investigate the matter,

who submitted a report.

10. Considering all aspects, the learned trial Judge recalled the interim order of payment of last wages as drawn. The learned trial Judge did not pass any order of refund and did not allow other prayer for criminal prosecution.

11. The learned Advocate for the appellant prayed for such before us in this appeal. It is the contention of the appellant that since the workman exercised fraud upon the Court by submitting a false statement in the application u/s 17B of the said Act by contending categorically that he was unemployed and even on the rejoinder of the application for recalling, it was contended by the workman that company would not be able to prove it fraud as exercised was proved and as such the workman concerned has to suffer the criminal prosecution as well as the order for refund of money. It is further contended that the workman made the Court below to believe when the first order was passed by the learned trial Judge granting relief u/s 17B of the said Act as an interim measure that the workman was not employed. This appeal has been opposed by the workman contending inter alia that even if the workman was employed, under the proviso of section 17B, Court has to consider whether adequate remuneration was paid during such period and accordingly urged with the help of said proviso to section 17B of I. D. Act, that even if the affidavit as filed by contending that workman was unemployed, the said should not be considered as an exercise of fraud upon the Court but a defence.

12. The respondent workman further contended relying upon the judgment of Apex Court passed in the case of Dena Bank v. Kiritikumar T. Patel, reported in 1998 (78) FLR 45 that since the provision u/s 17B of said Act is a beneficial legislation it should be interpreted liberally in favour of the workman. It has been further contended relying upon the case of Dena Bank (supra) that the order passed u/s 17B quantifying the amount of wages is not refundable or adjustable but it is in the nature of subsistence allowance during pendency of hearing of the writ application where stay is granted to restrain implementation of the award of the Tribunal directing reinstatement in the service. A judgment of Orissa High Court passed in the case of [The Management of TCPB, The Oberoi Palm Beach Hotel Vs. Presiding Officer, Labour Court and Another](#), has also been referred to and it is contended that section 17B is a beneficial provision and employer has to prove gainful employment. It is further contended relying upon that report that in that case 25 days employment was treated as casual employment and that amount was only deducted.

13. In a nutshell, it is the submission of the workman-respondent that even if any submission is made by the workman in his application u/s 17B that he was not employed in any establishment during the concerned period but subsequently if it appears that such submission was wrong, there should not be any penalty by considering the issue in the angle of fraud upon the Court. To appreciate the argument we have to consider the relevant statutory provision of section 17B of said

Act. There is no doubt that it is a social welfare legislation introduced w.e.f. 21st August, 1984 to mitigate the suffering of the poor workman who has been successful to have an award of reinstatement in service. But it is not an automatic process that each and every workman who has been awarded with such an order of reinstatement in service would get an automatic order from High Court when such order is stayed by the High Court. Statutory provision is not to that effect. Statute however passed a limitation allowing the payment of maintenance allowance in the nature of last wages as drawn while passing the stay of the impugned award on being satisfied from the affidavit filed by the said workman that he was not employed in any establishment during that period. The legislatures purposefully has casted duty to the workman to submit the application by filing affidavit to that effect that he was not employed in any establishment for his entitlement of relief u/s 17B of the Industrial Disputes Act. As such affidavit as to be filed by the workman contending that he was not employed in any establishment, is a condition precedent or sine qua non for applicability of section 17B of the Industrial Disputes Act. If a workman does not file an affidavit, Court suo motu cannot exercise power and furthermore if the workman fails to satisfy the requirement that he was not employed in any establishment in terms of the wording of the section 17B in that case workman is not entitled to approach the Court and his application would be summarily rejected.

14. In paragraph 9 the workman categorically submitted that he was unemployed and in response to the application for recalling of the order as filed by the company, the workman filed rejoinder therein submitted that the company would not be able to prove that he was employed in any establishment during that period. The supplementary affidavit as filed by the company in the Court below annexing the pay slips for the years 2001-03 proved the fact that the workman was employed in any establishment and no rejoinder of it was filed by the workman.

15. From the report of the Special Officer, however, it appears that the Director of the Company intended to pass the issue by contending inter alia that the workman was not employed in any establishment in the pay roll but he used to attend the office for accounting job. It is further reported by the Special Officer that the Director of the company answered the issue about the pay slips to this effect that for the purpose of securing bank loan the workman was requested to accept employment in paper and accordingly, the pay slips were issued. We do not believe that story which has been urged by the learned advocate for the workman-respondent contending that pay slips as annexed in the supplementary affidavit had no evidentiary value. From the very nature of the pay slips it appears that the house rent allowance was released in favour of the workman and statutory deduction was made for West Bengal Professional tax from his pay. The very nature of the pay slips lead us to believe that the pay slips were genuine and submission of the Director before the Special Officer was nothing but a story to save the workman concerned and to by pass the issue which is best known to him. The learned trial

Judge as such was right to believe the pay slips to conclude that workman was employed at the time when he affirmed this application u/s 17B of I. D. Act.

16. Having regard to such factual scenario, we are of the view that the workman-respondent committed fraud upon the court and submitted a false affidavit knowing it false by contending that he was not employed in any establishment and thereby was successful to have an interim order in his favour on 8th October, 2002 when the Court passed an order considering his application seeking relief u/s 17B of the Industrial Disputes Act.

17. The contention of the learned Advocate for the workman-respondent relying upon the judgment of the Orissa High Court that even on inquiry if it appears subsequently that workman was employed somewhere, the amount only could be deducted but it cannot be a ground to hold that workman submitted false affidavit before the Court of law while filing application u/s 17B of the Industrial Disputes Act is not legally sustainable. It is a settled legal position that a person must approach the Court in clean hand and when the matter could be heard by the High Court he requires to submit his case properly by disclosing all material facts and no facts should be distorted to attract the principle of suppression veri and/or suggestio falsi. It is a settled legal position that the false affidavit vitiates everything and the Court of law should not allow a person filing such false affidavit to secure an order in his favour. "Effect of fraud would normally be to vitiate all acts and orders - it vitiates all actions"- is the observation of the Court passed in the case of *Smith v. East Elloe Rural District Council*, reported in (1956) 1 All ER 855. The Apex Court answered the issue that power to recall/cancel an order which obtained by fraud applies not only to Courts of law but also to statutory tribunals which do not have power to review in the case of [Indian Bank Vs. M/s. Satyam Fibres \(India\) Pvt. Ltd.](#), . The judgments passed in *Satyam Fibre (supra)* and *Smith (supra)* had been followed in the case of [Indian National Congress \(I\) Vs. Institute of Social Welfare and Others](#), .

"Fraud is an extrinsic, collateral Act, which vitiates the most solemn proceedings of Courts of justice"- is the view expressed by Chief Justice Grey in *R. v. Duchess of Kingston*, reported in 2 Smith LC 687. It is also observed therein by Lord Coke that it avoids all judicial acts, ecclesiastical and temporal.

"No judgment of a Court, no order of minister can be allowed if it has been obtained by fraud- fraud unravels everything"- is the observation passed in the case of *Lazarus Estates Ltd. v. Beasley* by Lord Denning, reported in 1956 1 All ER 341. In the said case of *Lazarus (supra)*, Lord Parkar CJ observed "Fraud vitiates all transactions known to the law of however high a degree of solemnity. The Apex Court also considered that issue in different cases, namely in [Ram Chandra Singh Vs. Savitri Devi and Others](#), , [Vijay Shekhar and Another Vs. Union of India \(UOI\) and Others](#), (a judgment of three-Judge Bench).

18. The Corpus Juris, volume 49, para 265, has discussed the issue in this angle ♦ "Courts of records or of general jurisdiction have inherent power to vacate or set aside their own judgments in the event of discovery of any fraud or misrepresentation". Decree or order obtained by fraud and its effect was considered in the case by holding that it is a nullity, as reported in [T. Vijendradas and Another Vs. M. Subramanian and Others](#), wherein the Apex Court applied the earlier cases on that field. The Apex Court further held that submission of false affidavit is also a contempt of Court including submission of the forged documents by holding that the same is nothing but interference with the administration of justice and it is a criminal contempt u/s 2(c) of the Contempt of Courts Act, 1971. This view has been taken in the case of [Chandra Shashi Vs. Anil Kumar Verma](#), . Filing of false affidavit is criminal contempt, reliance is made to the case of [Murray and Co. Vs. Ashok Kr. Newatia and Another](#), .

When there is a fraud exercised by way of submission of a false statement of facts, the order is required to be recalled and no benefit could be available therefrom and all benefits should be also recalled"- is the view expressed in the case [Hamza Haji Vs. State of Kerala and Another](#), , wherein the Apex Court has gone to the extent that even the second review application is maintainable by the Court if there is an exercise of fraud. In that case, a person got a benefit of retention of his land under Kerala Private Forests (Vesting of Assignment) Act, 1971, by contending that those were forest land, by filing an affidavit to that effect. On the basis of which the Tribunal allowed it. It was challenged unsuccessfully by the State and subsequently review application was dismissed. But later on, a group of citizens of that area moved a writ application in the High Court and the State also filed another second review application. Both were taken up for hearing and the High Court quashed its earlier order of rejection as well as the order of the Tribunal referring relief to the applicant who intended to retain the land by submitting a false affidavit. When the matter went to the Supreme Court, the Supreme Court answered the point that the second review was permissible by the High Court on the factual matrix of the case as there was a clear case of fraud exercised by the person concerned to gain something illegally.

19. In the instant case, principle of Hamza Haji (supra) is squarely applicable. The workman concerned, by filing an affidavit submitted that he was still unemployed and on the basis of such submission, the Court passed the interim order granting relief in the application u/s 17B of said Act by the order dated October 8, 2002. This order was recalled by the impugned judgment under appeal before us, by the learned trial Judge by holding that the workman was employed in an establishment by considering the supplementary affidavit where pay slips were annexed.

20. The views expressed in Dena Bank (supra) have no applicability in the instant case as herein by misrepresentation and by submission of false statement; the workman secured the order u/s 17B, which was recalled. Naturally, as a

consequence thereof, the learned trial Judge ought to have passed the order of refund and other relief.

21. For the ends of justice and to maintain the purity of justice delivery system, we are of the view that nobody should be granted any premium who comes with an unclean hand and who submits a false application before the Court of law. The workman concerned deliberately and purposely submitted a false statement and as such the learned trial Judge ought to have passed a direction in terms of prayers (c), (d) and (e). The appellant is aggrieved for that. Considering our findings and observations, we are accordingly allowing these prayers (c), (d) and (e). Accordingly, the workman is directed to refund the amount as already received on the strength of the interim order dated October 8, 2002, within two months from this date by depositing the same directly to the company, failing which the company will take appropriate steps. The High Court registry is directed to initiate an appropriate criminal proceeding by referring the issue to the learned Chief Metropolitan Magistrate, Kolkata, for submission of the false affidavit for appropriate proceeding.

22. The appeal being APO No.146 of 2008 is accordingly allowed by passing the aforesaid order.

23. In view of our findings in APO No. 146 of 2008 and considering the impugned judgment under appeal, we are now deciding the issue in APO No.331 of 2008, wherein the impugned judgment under appeal reads such:

"THE COURT: This is an application u/s 17B of the Industrial Dispute Act, 1947 filed by the applicant Sri Samir Sarkar for a direction upon the writ petitioners M/s. STP Ltd. for payment of full wages last drawn by him together with other allowances payable to him in terms of the award dated 26.04.2002.

Following the cropping up of an issue as to whether the termination of service of the workman called Sri Samir Sarkar was justified, a reference was made to the Industrial Tribunal, West Bengal for adjudication. The learned Industrial Tribunal on scanning the evidence adduced by the parties passed an award to the effect that the workman was entitled to reinstatement in service with all backwages. The award was also published in terms of the provision of section 17B of the Industrial Dispute Act, 1947. Challenging the award, the employer filed the writ petition. Following the listing of the writ petition, the present petition u/s 17B of the Industrial Dispute Act was tiled on behalf of the workman for payment of his dues in terms of the last wages drawn by him.

Appearing on behalf of the applicant, Mr. R.N. Majumdar, learned senior advocate, has submitted that in view of incorporation of the beneficial legislation in section 17B of the Industrial Dispute Act, 1947 wherever a labour Court or Tribunal by its award directs reinstatement of any workman and the employer prefers any proceeding against such award in the High Court or the Supreme Court, the employer shall be liable to pay such workman during the period of pendency of such

proceeding in the High Court or the Supreme Court full wages last drawn by him inclusive of any maintenance allowance admissible to him. In view of the writ having been filed challenging the award of reinstatement of the workman with full wages, the employer should be immediately directed to pay the full wages last drawn by the employer.

Accepting the proposition the workman would not be entitled to get any relief in the event of his being employed in any establishment during such period, Mr. Majumdar has argued that no satisfactory material could be produced on behalf of the employer to establish his stand that the concern workman had been gainfully employed in some other establishments.

Taking a due from the reports of the special officer appointed by this Court, it is submitted that the learned Special officer had only indicated that the concern workman was associated with another concern for a limited period only. There is clinching evidence that the workman had received remuneration or wages for the service rendered by him in another concern. Even service for a limited period cannot stand in the way of his claiming his due in terms of the last wages drawn by him. What the employer paid was wages for a specified period. The admissible allowances had been withheld. The writ petitioner having sought to wreak vengeance, the employer must be immediately directed to make payment in terms of the last wages drawn by the employer together with the arrear as well as the other admissible allowances payable to the workman, as urged by Mr. Majumdar.

Challenging the contention of the workman that he is entitled to receive his due in view of award directing his reinstatement with all full backwages, Mr. Kalyan Bandopadhyay, learned senior advocate, has submitted that in view of fraud being practised upon the Court, his applications should be rejected straightway. Contempt proceeding should also be drawn against him for making false statement, as urged by Mr. Bandopadhyay.

Drawing the attention of the Court to the reports submitted by the learned Special Officer, Mr. Bandopadhyay has submitted that the report has falsified the claim of the applicant that he was not in gainful employment with any other concern after passing of the order. The report, as submitted by Mr. Bandopadhyay, reveals that the applicant Mr. Samir Sarkar did receive a fixed amount of Rs.5270/- per month by way of remuneration from M/s. Universal Surface Protection Pvt. Ltd. Suppressing the factum of gainful employment with another concern called M/s. Universal Surface Protection Pvt. Ltd., the applicant received the interim wages in terms of section 17B of the Industrial Dispute Act, as directed by the Court earlier. In view of dubious practice being followed, no equitable relief should be extended to the petitioner, as contended by Mr. Bandopadhyay.

Section 17B is a social welfare legislation. It aims at overcoming the hardship faced by the workmen during the protracted litigation in the aftermath of injunction and

stay being granted by the High Courts and the Supreme Court. The direction to pay full wages last drawn by him is to help him sustain and survive during the tenure of litigation in the High Courts or the Supreme Court.

The pre-requirements for invoking this section are:

- i) the award of the tribunal should have directed reinstatement of the workmen on setting aside the order of his dismissal or unfair termination of service;
- ii) the employer should have preferred proceedings against such award before a High Court or the Supreme Court;
- iii) the workman should not have been gainfully employed in any establishment during the pendency of the proceedings; and
- iv) as a proof of that, the workman should have filed an affidavit before the Court before which the proceedings have been preferred.

The employer, in the instant case has challenged the award of reinstatement passed by the Tribunal. The workman has also filed an affidavit before the writ Court that he had not been employed in any establishment after the passing of the award. In view of the averments made in the affidavit, this Court passed an interim order directing the writ petitioners to pay interim wages to the workman in terms of section 17B of the West Bengal Industrial Dispute Act. Payments in terms of wages last drawn by the employee, as reflected in the record, were being made on behalf of the employer. It was after substantial payments having been made that the writ petitioner came up with an application for recall of the order for payment of interim wages. It was contended that the concerned employee had suppressed the fact that he was been in gainful employment with a concern called M/s. Universal Surface Protection Pvt. Ltd. The whole issue being shrouded in the ministry this Court appointed a Special Officer to enquire into the matter. Mr. Ayan Banerjee appointed as a special officer submitted a detailed report reflecting the real state of affairs after making a thorough enquiry. He had the occasion to meet Mr. Manohar, the Director of M/s. Universal Surface Protection Pvt. Ltd. The Director did not accept the charge that the applicant Mr. Samir Sarkar was a staff of their concern. Mr. Manohar however acknowledged that Mr. Sarkar visited their office for the purpose of preparations of papers for a substantial period. The name of Mr. Sarkar was also shown in the payment sheet. There is reflection in the payment sheet that a fixed amount of Rs.5270/- was paid to Mr. Sarkar by way of remuneration. The report of the special officer negates the claim of the applicant Mr. Samir Sarkar that he had not been employed with any other concern during the relevant period. He received more than two lakhs by way of interim wages in the aftermath of filing of application u/s 17B of the Industrial Dispute Act.

Burden is on the employer to satisfy the Court that the workman had been employed and had been receiving adequate remuneration during such period of

part thereof. Our such burden is proved, no direction for payment of wages in terms of section 17B of the Industrial Dispute Act can be issued. In the instant case, the writ petitioner had placed sufficient and cogent materials to establish that the workman had been employed in M/s. Universal Surface Protection Pvt. Ltd. He also received remuneration, as borne out by the pay slip issued by the said concern. The workman continued to receive interim wages despite being employed with some other concern.

One of the conditions for invoking the provision of section 17B of the Industrial Dispute Act is that the workman had not been employed in any establishment during such period. It emerges during the pendency of the proceeding that he did serve a concern for remuneration. Person suppressing facts is not entitled to claim equitable relief. Such startling disclosure having been made, the concern workman cannot ask for interim wages as provided in section of Industrial Dispute Act. In fact, he has drawn excess wages. The writ itself is ripe for final disposal judging the aspects, the prayer for continuation of interim wages, as provided u/s 17B of the Industrial Dispute Act, is rejected.

Urgent Xerox certified copies, if applied for, are to be supplied."

24. It appears that the learned trial Judge rejected the application u/s 17B as was pending, on considering the order seeking recalling the interim order dated October 8, 2002, which is the subject matter of APO No. 146 of 2008. We are not finding any new material to interfere with the said order passed by the learned trial Judge under appeal. This appeal, being APO No.331 of 2008 has been preferred by the workman. Having regard to our findings and observations passed in APO No.146 of 2008, we are of the view that there is no merit in APO No.331 of 2008 and we are not inclined to interfere with the impugned judgment under appeal. The appeal being APO No.331 of 2008 accordingly stands dismissed with cost of Rs.1000/- to be paid to the respondent.

25. Urgent xerox certified copy of this order be made available to the parties, if applied for, upon compliance of all requisite formalities.

Stay of this order is prayed for, which is considered and refused.

S.K. Gupta, J.

26. I agree.