

(1978) 05 CAL CK 0001**Calcutta High Court****Case No:** Matter No. 144 of 1978

West Bengal Dock and Port
Mazdoor Union and Another

APPELLANT**Vs**

Union of India and Others

RESPONDENT**Date of Decision:** May 12, 1978**Acts Referred:**

- Constitution of India, 1950 - Article 222(1), 226, 320(3)(c)
- Dock Workers (regulation Of Employment) Act, 1948 - Section 5A, 8

Citation: 83 CWN 117**Hon'ble Judges:** Sabyasachi Mukherji, J**Bench:** Single Bench**Judgement**

Sabyasachi Mukherji, J.

This is an application under Article 226 of the Constitution by West Bengal Dock & Port Mazdoor Union and one Bikash Hazra, as General Secretary of the said Union. The petitioners challenge the notification dated the 27th January, 1978 constituting the Dock Labour Board. By the said notification, in exercise of the powers conferred under sub-section (3) and (4) of section 5A of the Dock Workers (Regulation of Employment) Act, 1948, the Central Government had appointed the members of the Dock Labour Board u/s 5A of the said Act. Dock Workers (Regulation of Employment) Act, 1948 is an Act to provide for the regulation of the employment of dock workers. u/s 5A the Government is authorised to establish by notification in the Official Gazette, a Dock Labour Board for a port or group of ports to be known by such name. The Board shall consist under sub-section (3) of section 5A of the said Act, of a Chairman and such number of members as may be appointed by the Government. The proviso to the said sub-section stipulates that such Board shall include an equal number of members representing the Government, the dock workers, and the employers of Dock workers, and shipping companies. Section 8 of the said Act empowers making of the Rules. Under the said rule making power, Dock Workers

(Regulation of Employment) Rules, 1962, have been framed by the Central Government. Rule 3 of the said Rule, which is material, is as follows :

3. Composition of the Board--(1) Each Board shall consist of not less than 9 members and shall include an equal number of members representing--

(i) the Central Government;

(ii) the Dock workers ; and

(iii) the employers of dock workers and shipping companies.

(2) The Chairman of the Board shall be nominated by the Central Government from among the members representing the Government and there shall be a whole-time Deputy Chairman appointed by the Central Government in the ports of Bombay and Calcutta on such terms and conditions as the Central Government may determine ;

Provided that in the case of a Board established at any other port, the Central Government may appoint either a whole-time or a part-time Deputy Chairman on such terms and conditions as that Government may determine.

(3) The persons representing respectively the dock workers and the employers shall be appointed after consulting such association of persons as appear to the Central Government to be representative of such workers and such employers.

(4) No Act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or defect in the constitution of, the Board.

Rule 4 deals with the term of the office of the members and stipulates that a member other than a member representing the Central Government should hold office for a period of three years from the date of the notification appointing him as a member and shall be eligible for reappointment. Proviso to sub-rule (1) of Rule 4 stipulates that an outgoing member should continue in office until the appointment of his successor was notified in the official gazette. The second proviso further stipulates that a member appointed to fill a casual vacancy should hold office for the unexpired portion of the term of the person in whose place he was appointed. Sub-rule (5) deals with the occasion when a member is deemed to have vacated his office.

On the 7th April, 1967 the Dock Labour Board had been constituted on the basis of verified membership of the different workers" unions as on, 31st December, 1965. It is the case of the petitioners that the petitioner No. 1 was registered under the Trade Union Act on or about the 29th June, 1972. On 9th December, 1975 the Central Government, Ministry of Labour had issued circulars intimating that verification of membership of all the unions as on 31st December 1974 had been taken in hand. It is stated that during 2nd April, 1976 to 2nd May, 1976 the Labour Enforcement Officer attached to Regional Labour Commissioner, Calcutta, had visited different places at Calcutta dock area and made enquiries about the

membership of the different unions. On or about the 17th May, 1977 the Labour Enforcement Officer (Central), Calcutta had issued circular notices to different unions operating in Calcutta Dock area intimating that verification of the members of the Union as on 31st May, 1976 would be made. It may be mentioned that verification takes place every two years and on the 19th May, 1977 the Central Government by a letter requested the petitioner No. 1 and also other Unions to send the names of two representatives of the Unions whom the Unions would like to be considered to be members of the Dock Labour Board for the purpose of constitution of the Calcutta Dock Labour Board, in view of the contentions urged, in this case it may be relevant to refer to that letter which is as follows:

I am directed to say that it is proposed to reconstitute Calcutta Dock Labour Board. For this purpose, it is requested that the names of two representatives of your union whom the union would like to be considered for appointment as members of the Board may be communicated to this Ministry in the order of preference, immediately so as to reach this Ministry by 15.6.1977 at the latest.

In reply to the said letter, on 24th May, 1977 the petitioner No. 1 wrote as follows :

We have received your aforesaid letter of the aforesaid date wherein we are directed to send names of the two representatives of our Union to be considered for appointment as the members of the Board and in response to which I am directed to place the following names of the representatives of our Union in terms of your aforesaid letter.

1. Sri Bikash Hazra

2. Sri Zafar Imam.

2. Between 26th September, 1977 and 29th November, 1977 the Regional Labour Commissioner, Central Calcutta gave notices of spot verification. But the verification officer, it is alleged, could not come to the spot to make the verification due to disturbances in Calcutta Dock area. On the 24th January, 1978 Assistant Labour Commissioner (Central), Calcutta issued notices to several unions including the petitioner union intimating that the matter in connection with the current spot verification of the membership would be discussed on or about the 3rd February, 1978 and on the 27th January, 1978 the impugned notification was issued appointing, inter alia, the representatives of five unions as members of the Calcutta Dock Labour Board. The nominees of the petitioner No. 1 were not included in the said appointments. The petitioners thereupon moved this application under Articles 226 of the Constitution and on or about the 14th February, 1978 obtained the present rule nisi. The notification dated 27th January, 1978 was gazetted on the 3rd March, 1978.

3. The grievance of the petitioners is that the impugned notification had been issued constituting the Dock Labour Board in violation of the rules, specially Rule 3,

sub-rule (3) of the aforesaid Rules which have been set out before. According to the petitioners the said rule enjoins the Central Government before constituting the Dock Labour Board to consult such association of persons as appear to be representative of dock workers and after consulting such representative association to appoint such representative as members into the Dock Labour Board. In this background it is contended that such consultation had not taken place and the letter mentioned hereinbefore was not the type of consultation contemplated by the said Rules. It was, further, contended that the petitioner No. 1 had 50% of the registered members of the dock workers, yet the petitioner No. 1 had been excluded from its representation in the said Board. It was urged that the action of the Central Government had been taken malafide mainly at the instance of the Chairman of the Calcutta Port Trust and certain alleged acts of malfide have been set out in the petition in aid of this contention.

4. So far as the charges of malafide have been alleged, there are mainly mentioned in paragraph 32 of the petition. They accuse the Chairman of the Dock Labour Board to have been actuated by malice against the petitioner No. 2, who was the General Secretary of the petitioner No. 1 as well as the president of the petitioner No. 1, for their alleged activity of bringing to notice of the Government and the parliament certain alleged acts of under-invoicing and malpractices in the Calcutta Port. In view of the nature of the allegations made and in view of the fact that the Central Government constituted the Dock Labour Board in accordance with the Rules and in view of the affidavit filed by the said Chairman of the Calcutta Dock Labour Board, I am unable to sustain the said bad allegations of malafide. Therefore, the contention that the Board had been constituted malafide and the representatives of the petitioner No. 1 had not been included at the instance of the Chairman of the Calcutta Dock Labour Board, in my opinion, cannot be sustained. This contention, therefore, fails.

5. The main question, however, as mentioned hereinbefore was whether Calcutta Dock Labour Board had been constituted in conformity with Rule 3, sub-rule (3) of the aforesaid Rules as set out hereinbefore. On behalf of the respondents it was contended that the said rules were not mandatory but only directory. Reliance in this connection was placed on the observations of the Supreme Court in the case of State of U.P. vs. Manbodhan Lal AIR 1967 SC 912. There the Supreme Court was construing the provisions of Art. 320(3) (c), and the Court observed that the said provisions were not mandatory and noncompliance with those provisions did not afford any cause of action to civil servants in any Court of law. It was, further, observed that these provisions were not in the nature of a rider or proviso to Art. 311 of the constitution. Article 320(3) (c) of the constitution did not confer any rights on a public servant so that the absence of consultation or the irregularity in consultation should not afford him a cause of action in a Court of law or entitle him to any relief under the special powers of the High Court under Art. 226 of the Constitution. The said observations were made in connection with Art. 320,

sub-clause (3) which enjoins that the Union Public Service Commission or the State Public Service Commission, as the case may be, "shall be consulted" on certain matters. Sub-rule (3) of Rule 3 of the instant Rules, with which I am concerned in this application, empowers the Government to appoint the Dock Labour Board "after consulting" such association of persons as appear to the Central Government to be representative of the workers and such employers. The consultation with the association is a condition precedent, if sub-rule (3) of Rule 3 is read strictly, before the right of the Government to constitute a Dock Labour Board. From that point of view unlike sub-clause (3) of Art. 320 of the Constitution, sub-rule (3) of Rule 3 of the present Rule may tend to suggest that the same is mandatory and not merely directory. But it is not necessary, in my opinion, to go into this question because apart from the fact that even if it is directory, the Rule should be as far as possible complied with in a case of this nature. Therefore, one has to examine whether the rule has been substantially complied with, because even if it is directory the rule must be substantially complied with unless there are good and adequate reasons for non-compliance of such directory provisions and if there has been substantial compliance of a rule of this nature, the consultation would not, in my opinion be vitiated by any technical breach. The expression "consultation" is not strictly defined and I suppose the purpose of sub-rule (3) of Rule 3 is the ascertainment of the views of the workers to make the body representative of the workers as far as possible so that it can be responsive to their demands and welfare. Therefore, such ascertainment must be in a responsible and re-reasonable manner which would, in a particular situation, reflect such representation which would be responsive to the welfare and the needs of the workers. This seems to me to be the primary object of the requirement of consultation with representative association of workers. My attention was drawn to Words and Phrases Legally Defined, Second Edition, at page 326 where it has been noted that the word "consultation" is one that is in general use and that is well understood. No useful purpose would, therefore, be served by formulating word of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place.

6. In the case of *Fletcher-v-Minister of Town and Country Planning*, (1947) 2 All E.R. 496 at page 500 dealing with the relevant Act Mr. Justice Morris observed that the Act did not prescribe any particular form of consultation and if a complaint was made of failure to consult, it would be for the Court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultation might often be somewhat a continuous process and the happenings at one meeting might form the background of a later one.

7. In the case of *R. Pushpam and Another Vs. The State of Madras and Another*, Mr. Justice Subba Rao (as His Lordship then was) had an occasion to consider this question in connection with the Madras District Municipalities Act, 1920. There it was held that the expression "consult" implied a conference of two or more persons or the impact of two or more minds brought together in respect of a topic with a

view to evolve a correct or at least a satisfactory solution. It must be directed to the essential points of the subject under discussion and enable the consulter to consider the pros and cons before coming to a decision. The consultation may be between an uninformed person and an expert or between two experts. The learned Judge, further, observed that when an authority was entrusted by a statute with a duty to be performed after consultation with another authority, there was no performance of that duty when it did not consult or consulted only in formal compliance, with the statute.

8. In the case of Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, the Supreme Court had made certain observations on the type of consultation in the background of Article 222(1) of the Constitution which required the President to consult the Chief Justice of India in certain matters. The Supreme Court at page 2347 of the report referred with approval of the aforesaid decision of the Madras High Court referred to hereinbefore.

9. In my opinion, it is not possible nor is it desirable to define the expression "consultation" or "consulting" in every case. One should look at the substance of the matter, the object, for which consultation is intended to be made, and find out whether in a particular case the consultation had taken place as enjoined by the statute or the relevant provisions.

10. In this case on behalf of the respondent the Central Government one Shanti Narain Kakar by an affidavit affirmed on 20th April, 1978 has mentioned that previously the appointment of the labour members of the Calcutta Dock Labour Board had been done on the basis of the verified membership figures as on the 31st December, 1965 and the constitution of the Labour Board was pending for a very long time and there was no available verified record of membership of the Unions. The 1972 and 1974 verifications were thoroughly unreliable and the verification of the membership as on 31st December, 1976 had not been completed due to certain circumstances mentioned in the said affidavit. Therefore, in order to reconstitute the Dock Labour Board which had not been constituted for so long a time, the Board had decided to proceed on the basis of the verification of members as on the 31st December, 1972. The deponent has stated in sub-paragraph (j) of paragraph 3 of the said affidavit that in view of the need to reconstitute the Calcutta Dock Labour Board, which was a long overdue the Central Government found no other alternative but to rely upon the verified membership figures of Unions of Dock Labour Board as on the 31st December, 1972 to determine the representative character of the various Unions at the Calcutta Port. According to the deponent the verified membership figure as on 31st December, 1972 showed that the petitioner No. 1 Union had nil membership. In the circumstances, the respondents Nos. 10 to 14 whose Unions appeared to the Central Government to be representatives of the Dock workers on the basis of the verified membership figures as on 31.12.72 were appointed as members representing the workers of the Calcutta Dock Labour

Board. The deponent had further drawn my attention to Rule 4, sub-rule 5 of the said Rules which stipulated that a member representing the Dock workers should be deemed to have vacated office if, in the opinion of Central Government, he ceased to be the representative of such Dock workers. Thus, the Central Government could review the representative character of different unions as and when the verification figures as on 31st December, 1976 were received.

11. In this context the letter of the 19th May, 1977 which I have set out hereinbefore has to be viewed in order to determine whether there was in fact consultation by the Central Government as contemplated by sub-rule (3) of Rule 3 of the said Rules. As I have mentioned before, the purpose of the Sub Rule (3) of Rule 3 was to include in the Dock Labour Board representative members of the workers who are responsive to the needs and welfare of the workers. Now, a method which envisages the inclusion or consultation of workers who had been regular workers in 1972 for the purpose of reconstituting the Dock Labour Board in 1978, in my opinion, is not working in the manner and spirit in which the said Rule is enjoined to be worked out. It is admitted in the affidavit that in 1972 the members of the Dock workers were about 12400, while in 1978 when the Dock Labour Board had been constituted the membership was something over 9000. Therefore, to constitute a representative body on, the basis of figures of 1972 in 1978 and to consult the Unions of the workers on that basis, in my opinion, is against the substance of the requirements of sub-rule (3) of Rule 3 of the said Rules. It is not a matter where there was directly consultation as enjoined in the Rule. It is far more important whether the purpose which was sought to be achieved by the method of consultation had in fact been achieved in the manner done. From this point of view, in my opinion, it is also not important whether the consultation should have taken place by asking the Unions of give all the five names of the workers of the Unions or to ask the representative of the Unions to nominate only two of such names. What was important was that the representation of the views should have been asked from the members who were responsible for the workers" need at the time when such views of the Unions were sought for. In my opinion, to contend that in 1978 the views were asked for in respect of the basis of the verification in 1972 is to contend for an unreality which is unsupported by the spirit and purpose of sub-rule (3) of Rule 3 of the said Rules.

12. Then the question arises when the verification does not take place for a long time, what the Central Government has to do ? The verification in this matter, that is, its intention, had to be; in the meantime, the membership of the Dock Labour Board has been reconstituted. Considering the aforesaid aspect of the matter, I shall have to examine to what relief the petitioners are entitled to in this application. But before I do so, I must note that on behalf of the petitioners reliance was placed on certain observations in the case of Khudiram Das Vs. The State of West Bengal and Others, . Reliance was placed on the observations of the Court at page 557. There the Court was dealing with the scope of judicial review in respect of the

administrative action. In my opinion the said observations are not quite relevant in context in which the contentions in this case have to be viewed. Reliance was also placed on certain observations in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in aid of the submission that in administrative decision principles of natural justice are required to be followed and therefore, the method of consultation followed by the Central Government, that is to say, merely asking for two names from each Union and not letting the other Unions know all the names whose names have been considered by the Central Government for inclusion in Dock Labour Board, was in violation of the principles of natural justice. In my opinion no principles of natural justice is really involved in this case in view of the fact that sub-rule (3) of Rule 3 of the said Rules has itself envisaged consultation. The manner, as I said, of consultation must depend on the facts and circumstances of each case but if there were consultation then no further principles of natural justice was required to be followed; but it is true, as has been enjoined precisely by the Supreme Court that consultation in administrative action must be in consonance with the well-settled principle of fair play in action which is also an aspect of the principle of natural justice. But as I have mentioned before, to have reconstituted the workers" representatives on the Dock Labour Board and to have consulted the Unions on the basis of the verification in the year 1972 when the Dock Labour Board was reconstituted in 1978, in my opinion, is not proper consultation as enjoined by sub-rule (3) of Rule 3 of the said Rules. As I have indicated the Board has been reconstituted and there has been gazette notification. The notification dated the 27th January 1978 so far it include members representing the Dock workers, is quashed and should not be given effect to; but inasmuch as the said notification has been given effect to being published in the Gazette, the said Dock Labour Board would continue for a period of three months from this date and the Central Government must complete the verification of the Dock workers as on the 31st December 1976 and reconstitute by constituting the said Dock Labour Board in compliance with Rule 3 including sub-rule (3) of the said Rule within this period.

The Rule is made absolute to the extent indicated above.

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

In view of the nature of the order stay, asked for however, is refused.