(2009) 03 CAL CK 0012

Calcutta High Court

Case No: Writ Petition No. 10380 (W) of 2007

Garden Reach Ship Builders and Engineers Ltd.		APPELLANT
	Vs	
Second Labour Court and Others		RESPONDENT

Date of Decision: March 18, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10(1B), 10(IB)(d), 15(2)(b), 2(a)

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: Dipak Kumar Ghosh and Ranjoy De, for the Appellant; Arunabha Ghosh, Anant Kumar Shaw, Shaikh Taj Mohammad and Rabi Kumar Dubey, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.

The Judgment of the Court was delivered by:

1. The instant application under Article 226 of the Constitution is directed against order No. 87 dated 16th of February, 2007 passed by the learned Second Labour Court, West Bengal in Case No. 66 of 1999.

2. The facts of the case may briefly be stated as follows.

3. Respondent No. 3, namely, Sri Bhudhar Chandra Paul (Man No. 101513) was working as a Clerk in the Salary & Wages Section of the company, being M/s. Garden Reach Ship Builders & Engineers Ltd. On the basis of a vigilance report dated 22nd March, 1997, he was charged on 28th of March, 1997 for his alleged involvement in withdrawal of an amount of Rs. 1,491/- forging signature and thumb impression. He allegedly involved on Sri Sisir Kumar Palodhy and obtained his thumb impression on an already existing thumb impression against No. 6079 in the unpaid wage register

against the name of Sri Gour Chandra Naskar, T. No. 4477. Sri Palodhy being advised by one Sri Rana Roy, clerk, brought this to the notice of the vigilance department. When the incident come to light, such Bhudhar'' Chandra Paul confessed before Sri Naskar that he had withdrawn his unpaid wages. Since the matter come to the notice of the vigilance department, an investigation was carried out. On the basis of the vigilance report, a charge sheet containing the charges was served upon Sri Paul. After considering the reply received from Sri Paul, the authority concerned decided to hold domestic enquiry. The Enquiry Officer concluded his report in respect of the said enquiry with the following observation:

"In view or the foregoing, I hold Sri Bahadur Ch. Paul, Man No. 101513 of Salary & Wages Section guilty of the charges levelled against him vide chare sheet No. 14/97 dated 28.3.97 and the charges of ..... fraud or dishonesty in connection with the company''s business or property under clause - 5, ''commission of any act subversive of good behaviour or of the discipline of the company under Clause-11'' and ''interfering with the record willful falsification, defacement.... of any records of the company'' under Clause-21 of the list of Major Misdemeanors of the Certified Standing Orders of the company applicable to him, are proved and established beyond any reasonable doubt .....".

4. On 3rd of July, 1998, the Enquiry Officer submitted his report holding the respondent No. 3 guilty of all the charges. Such report of the Enquiry Officer was furnished to the respondent No, 3. On 28th July, 1998, he submitted his representation against the report of the Enquiry Officer. By letter dated 1/2nd of September 1998, the respondent No. 3 was dismissed from the service of the company. On 10th of December, 1998, he raised an industrial dispute challenging the order of dismissal and ultimately filed an application u/s 10(IB)(d) of Industrial Disputes Act, 1947. The management filed a written statement. On 21st September, 1999, an application for interim relief was filed. Objection was raised thereto on 10th December, 1999. By an order No. 33 dated 21.2.2003, the respondent Labour Court rejected such application. Such order, however, was quashed by the High Court in a writ petition No. W.P. 896/03. The matter was remanded. On 16th February, 2007, the respondent Labour Court by an order No. 87 allowed the prayer for interim relief.

5. Mr. Dipak Ghosh, appearing as learned Counsel for the writ petitioner challenged the order impugned first on the ground that the reference to the Tribunal itself being not legal, it was not proper on the part of the learned Tribunal to grant interim relief without even deciding the maintainability of the proceeding before it. It was submitted that the company had been acquired by the Government of India. Its Board of Directors are appointed by the President of India, who can also remove them. Its orders are placed by the Ministry of Defence and accounts are audited by the Comptroller and Auditor General of India. The dividends are paid to the President of India and 100% shares of the company are held by the Government of

India, Annual reports are placed before the Lok Sabha and the Rajya Sabha. The company is run at the direction of the Ministry of Defence. Thus, the appropriate Government is the Central Government in respect of Industrial Disputes Act. 1947 and the Contract Labour (Regulation & Abolition) Act, 1970.

6. Mr. Dipak Ghosh submitted that the relevant portion of section 2(a) of the Industrial Disputes Act reads as follows:

" ''appropriate Government'' means-

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government ..... and

(ii) in relation to any other industrial dispute, the State Government."

7. Referring to the decision of the Apex Court in the case between Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , it was submitted on behalf of the writ petitioner that the conferment may be made either by a statute or by delegation of power and this is required to be ascertained on the facts and in the circumstances of each case.

8. It was emphatically submitted that the company having been acquired by the Government of India as far back as on 24th June, 1960, the appropriate Government is none other than the Government of India. It was then submitted on behalf of the writ petitioner that the respondent No. 3 was served with the charge sheet, which was prepared on the basis of vigilance report. There had been serious allegations against such respondent No. 3, The respondent No. 3 submitted a reply to the charge sheet. The same was taken into consideration. The authority concerned, however, decided to hold a domestic enquiry with a view to afford him a further opportunity to explain his conduct. Notice of domestic enquiry was issued. An Enquiry Officer was duly appointed to enquire into the charges levelled against him. Such enquiry is conducted on diverse dates between 21.5.1997 and 4.6.1998. The respondent No. 3 actively participated in such enquiry proceeding. The enquiry officer submitted report on 13.7.1998 holding thereby respondent No. 3 guilty of all the charge levelled against him. The evidence on record both oral as well as documentary was effectively analyzed by the Enquiry Officer. Copy of the enquiry report was duly sent to respondent No. 3. who was again advised to submit a representation. Representation was submitted on 28th July, 1998. It was taken into consideration but the authority concerned did not find any reason for discarding the finding of the Enquiry Officer. It could not be said that the conclusion arrived at by the Enquiry Officer was without any material basis or that the conclusion drawn was by any means contrary to the evidence on record. The appropriate authority accepting the findings of the Enquiry Officer and since the charges against the respondent No. 3 were all established, dismissed the employee from service.

9. The respondent No. 3 thereafter filed an application u/s 10(1B) of the Industrial Disputes Act, 1947. The petitioner company submitted a written statement on 10.12.1999. On 21.9.1999 an application for interim relief was filed. The petitioner company filed objection to the same on 10.12.1999.

10. Evidence was adduced by the parties both oral and documentary. By order No. 33 dated 21.2.2003 the respondent Labour Court rejected the application for interim relief. It was challenged by way of filing an application under Article 226 of the Constitution. The same was disposed of by the learned Single Bench of this Court by remanding the matter to the Tribunal ld with direction upon it to decide afresh on consideration of the entire evidence on record as to whether there is prima facie case in favour of the employee towards his claim for interim relief or not. The Tribunal was directed to decide the issue applying its mind in considering the entire evidence on record. Learned Court further directed that the Tribunal must give its finding within a period of 60 days from the date of communication of the order.

11. Mr. Ghosh on behalf of the writ petitioner submitted that while sending le matter back on remand, learned Could did not quash the order No. 33 dated 21st February 2003.

12. It was submitted on behalf of the petitioner that before granting interim relief, the learned Tribunal ought to have satisfied itself as to the existence of a prima facie case. It was further submitted that the learned Tribunal made certain observations in the impugned order, which would go long way to indicate that an opinion has already been formed and conclusion arrived at. Such order was further assailed on the ground that it reflects misappreciation of material and non-application of mind.

13. On the other hand, Mr. Arunabha Ghosh, as learned Counsel for the respondent, submitted that in an unequal legal battle, like the present one, learned Tribunal was perfectly justified in granting interim relief and it was me on being satisfied about the existence of a prima facie case. On behalf the respondent Mr. Ghosh submitted that there could be no justification whatsoever for assailing the impugned order whereby learned Tribunal quite rightly granted some interim relief.

14. The backdrop of the present controversy has been referred to in details. The impugned order dated 16.2.2007 has been passed in compliance with the direction given by learned Single Bench of this Court while remanding the case No doubt, the point relating to maintainability of the proceeding was taken before the learned Tribunal. It is necessary to mention that the learned Single Bench of this Court while disposing the earlier writ application directed the Tribunal to decide afresh on consideration of the entire evidence on record as to whether there is prima facie case in favour the employee towards his claim for interim relief or not.

15. As reflected from the copy of the judgment dated 11th of September, 2005 passed in W.P. No 896 of 2003, the controversy relating to maintainability was not raised before this Court earlier. Learned Court observed:

"Now the points for decision before this Court are;

Whether an application u/s 15(2)(b) of the Industrial Disputes Ad should be allowed in a blanket manner that is immediately when it is filed it is to be allowed. Whether the interim relief is a matter of right of the workman and it does not require support of any evidence or any prima facie case or any merit."

16. Mr. Dipak Ghosh invited attention of the Court to the communication dated 19th of July, 2006 made by the Director, Government of India, Ministry of Labour & Employment addressed to the Commodore (IN)/General Manager (HR & A). Garden Reach Ship Builders & Engineers Limited in support of his claim that the Central Government is the ''appropriate Government'' for the establishment of Garden Reach Ship Builders &. Engineers Limited. Kolkata under the Industrial Disputes Act, 1947. There can be no scope for dispute that the Industrial Disputes Act is a welfare legislation and section 15(2)(b) of the said Act empowers the learned Tribunal to grant interim relief.

17. While interpreting a piece of social legislation, it is not necessary for the Court or the Tribunal to examine as to whether every ''i'' has been dotted or every ''t'' has been cut. It certainly does not demand a rigid technical interpretation. A liberal interpretation is rather an essential requirement. As mentioned, section 15(2)(b) authorizes the learned Tribunal to pass order thereby giving interim relief. Learned Single Bench of this Court while disposing of the earlier writ application directed the Tribunal to decide afresh on consideration of the entire evidence on record. This was with reference to whether there is prima facie case in favour of the employee towards as claim for interim relief or not. There was no direction for dealing with any dispute relating to appropriate Government. This aspect was not even significantly referred to earlier.

18. In such backdrop, it is not understood as to how could the company insist for a decision in that regard. The earlier notification dated 13th of July, 1998 issued by the Ministry of Labour was also referred to in support of the claim that the power could also be exercised by the State Governments. In view of the specific direction of this Court while remanding the case back on remand by the judgment dated 21st of September, 2005, I do not think that there could be any further scope for the learned Tribunal to deal with the issue relating to ''appropriate Government'' at this stage.

19. Mr. Dipak Ghosh submitted that while dealing with an application for grant of interim relief, learned Labour Court/Tribunal must be satisfied at least prima facie that the workman has at least a plausible chance of success ultimately. In this context reference was made to the Division Bench decision of this Court in the case of Webel Nicco Electronics Limited vs. An.ima Roy, as reported in 1997(1) CLJ 310 and B.G. Sampat vs. State of W.B. & Ors., as reported in 2001(1) CHN 1.

20. True, once an interim relief is prayed for the Tribunal has to apply its mind to relevant facts including staleness of dispute and whether in a fact situation a workman is entitled to any interim relief or not and as regards existence of a prima facie case that the workman would be entitled to the reliefs when a final award is passed. It can never be said that just because there is a provision in the relevant Act for grant of interim relief, such relief should be granted mechanically and without application of mind.

The question naturally arises as to how far the Tribunal or the Court should go in order to satisfy itself regarding the need for granting such interim relief. There can be no dispute that existence of a prima facie case is a sine qua non for granting interim relief by way of directing the company to make some payment in favour of the dismissed employee.

21. Referring to the decision of the Apex Court in the case of Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt. Ltd. and another, , Mr. Dipak Ghosh submitted that the Court or the Tribunal is not expected to give principal relief as sought in the petition by way of granting interim order. The Apex Court in the said case observed:

"Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations."

22. It was further submitted that the report of the Enquiry Officer, which is under review before the learned Tribunal, is supported by some evidence, there could be no justification for any interference.

23. In this context, Mr. Dipak Ghosh referred to the decision of the Apex Court in the case of R.S. Saini Vs. State of Punjab and Others, . It is the settled position of law that if there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter, which can be permitted to be canvassed before the Court in writ proceedings.

24. In the case of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, , it was held that "the settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

25. Mr. Ghosh referred to the decision of the Apex Court in the case between Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, , wherein referring to the

earlier decision in the case of State of Haryana and Another Vs. Rattan Singh, it had been observed that "sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny by Court, while absence of any evidence in support of the finding is an error of law apparent on the record and the Court can interfere with the finding".

26. Mr. Dipak Ghosh went a step further while submitting that the confession before the police authority is also admissible in evidence in a departmental proceeding. In this context, he referred to the decision in the case of Commissioner of Police, New Delhi Vs. Narender Singh, .

27. In course of hearing, reference was also made to the acceptability of the evidence of a hostile witness. In Sat Paul vs. State of West Bengal, as reported in 2006(2) CHN 484, the learned Single Bench of this Court in connection with a criminal appeal held that the testimony of hostile witness, if not shaken on material point in cross-examination, cannot be brushed aside.

28. It was further contended on behalf of the petitioner that admission is the best piece of evidence against the persons making admission. [Ref: Divisional Manager, United India Insurance Co. Ltd. and Another Vs. Samir Chandra Chaudhary, ; Makali Engg. Works Pvt. Ltd. Vs. Dalhousie Properties Ltd.,].

29. Relying upon the decision in the case of Mukand Ltd. Vs. Mukand Staff and Officers'' Association, , it was submitted by Mr. Dipak, Ghosh on behalf of the writ petitioner that non-consideration of the material placed before the Tribunal cannot be said to be any effective adjudication. He further dealt with the standard of proof in domestic enquiry.

30. In this context, reference was made to the decision of the Apex Court in the case of Lalit Popli Vs. Canara Bank and Others, . The Apex Court in the said case, referring to an earlier decision in the case of State of Rajasthan Vs. B.K. Meena and others, , held that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of ''proof beyond doubt'' has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

31. While assailing the impugned order on the ground that the Tribunal having no jurisdiction to pass such an order, it is a nullity, Mr. Ghosh referred to the decision of the Apex Court in the case between Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others, .

32. It was further contended on behalf of the writ petitioner that delegation never denudes the delegator of its power. In the case of RIC Workers & Employees Union, W.E. & Ors. vs. Union of India, as reported in 2002 Lab. IC 62, learned Single Bench

of this Court observed that the delegate docs not act of its own. It does it as a delegate for the delegator.

33. Deriving inspiration from the decision of the Apex Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , Mr. Ghosh submitted that determination as to whether the Central Government is the appropriate Government or not would depend upon facts and circumstances of the case. There can be no dispute in this regard.

34. It follows from the discussion as made above that Mr. Ghosh, as learned Counsel for the writ petitioner, has rather chosen to deal with virtually all aspects of the matter. It is well-settled that in a departmental proceeding or a domestic enquiry, it is not necessary that there must be proof beyond reasonable doubt. Preponderance of probability is the guiding factor. Even in a criminal trial, credibility of testimony, oral or circumstantial, depends on judicial evaluation of the totality, not isolated scrutiny. It may be observed that proof beyond reasonable doubt is the guideline - not a fetish. It is necessary to bear in mind that truth may sometime suffer from infirmity which projected through human process. But I do not think there is any scope for any detailed discussion in this regard at this stage. This Court in response to the present writ application need not deal with the nature of the evidence before the Enquiry Officer and how the same had been dealt with.

35. It is also not necessary to analyze whether the respondent Tribunal had jurisdiction to pass an order thereby giving interim relief without ascertaining the legality of the reference. Any grievance relating to jurisdiction does not seem to have much relevance in the backdrop of the fact that the impugned order was passed in compliance with the direction given by this Court in W.P. No. 896 of 2003. The scope of remand of the case was limited to the extent that the learned Tribunal was to ascertain whether there is existence of prima facie case. This, in no way, suggests that the Tribunal by allowing interim relief has conclusively decided the controversy relating to jurisdiction in favour of the respondent employee.

36. In the peculiar backdrop of the present case, it would not be fair to suggest that without determining the jurisdiction and without ascertaining the legality of the dispute relating to ''appropriate Government'', the Tribunal has literally placed the cart before the horse. No doubt, the Tribunal was directed to consider the evidence on record and as it is reflected from the impugned order, the learned Tribunal analyzed the evidence. But for the purpose of dealing with an application for interim relief, it is neither necessary nor desirable to go for a detailed scrutiny of the materials on record.

37. The anxiety of the writ petitioner, as ventilated by Mr. Ghosh, that an order without jurisdiction is a nullity cannot be appreciated in the backdrop of the earlier order of the Writ Court, as referred to. It is true that wisent of the parties cannot confer jurisdiction. But it would be irrational to assail the impugned order granting

interim relief on the ground that such an order is a nullity since the Tribunal had no jurisdiction whatsoever. I fact, this rather reflects unnecessary anxiety, which cannot really pass the test of judicial scrutiny. That aspect has to be left open for effective adjudication at the appropriate stage. It may very well be that in response to an application for interim relief, the Court parses an interim order and ultimately, after conclusion of trial/hearing the case gets dismissed on the ground that it is not maintainable. The interim order does not in any way bind the ultimate result of a proceeding.

38. The Court, however, in the facts and circumstances of the present case, cannot be unmindful to the fact that it is a legal battle between two unequal. On the one hand there is the mighty company and on the other, a dismissed employee. The said employee has been knocking his head against the doors of the Tribunal. Neither a Court nor any Tribunal can afford to remain a passive onlooker. The argument that if the respondent employee finally loses the legal battle, the company would be left with very little scope to recover the amount does not hold good in the present socio-economic context of our society.

39. I find it extremely difficult, if not impossible, to accept that there can be no prima facie case in favour of the respondent employee or that the order under challenge by any stretch of imagination is unreasoned or that it is in violation of the principle of natural justice.

40. As mentioned earlier, the ground that the order suffers from non-consideration of materials or misappreciation of evidence does not deserve any elaborate consideration of detailed analysis at this stage. In the considered opinion of this Court the impugned order does not suffer from any antagonistic contradiction so as to justify any manner of interference.

41. Mr. Arunabha Ghosh, as learned Counsel for the respondent employee, in course of his argument referred to certain socio-legal aspects of the present case. For the limited purpose of dealing with the present application which is directed against an order granting interim relief. I do not think that there is need for any further detailed discussion.

42. Considering all such facts and circumstances and after giving due regard to the submission made by learned Counsel for the parties, this Court finds no impropriety or illegality in the order of the learned Tribunal whereby interim relief had been granted in favour of the respondent employee.

43. The present case, W.P. No. 10380 (W) of 2007 fails and be dismissed.

44. It may further be mentioned that the various points relating to jurisdiction and maintainability and the controversy relating to ''appropriate Government'' have been left open for adjudication by the learned Tribunal at the appropriate stage.

45. There is no order as to costs.

46. Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.

47. Immediately after passing of the aforesaid order, learned Counsel for the petitioner has prayed for stay of operation of the same.

48. After hearing learned Counsel for both the parties and having regard to the nature of the order which has been sought to be stayed and other relevant facts and circumstances, prayer for stay is refused.

49. Xerox certified copy of the order be supplied to the parties, if applied for, as expeditiously as possible.