

Burdwan Samabay Himghar Samity Ltd. Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Feb. 29, 1988

Acts Referred: Constitution of India, 1950 " Article 226

Citation: 92 CWN 949

Hon'ble Judges: Susanta Chatterjee, J

Bench: Single Bench

Advocate: Dipak Roy and K.K. Bandhapadhy, for the Appellant; Bikash Ranjan Bhattacharjee and Santi Das, for the Respondent

Final Decision: Dismissed

Judgement

Susanta Chatterjee, J.

The present writ petition has been filed by Messrs. Burdwan Samabay Himghar Samity, a Co-operative Society,

within the meaning of the West Bengal Co-operative Societies Act and its Secretary as the petitioner no. 2 for issuance of a writ of Mandamus

commanding the respondents authorities to forbear from giving any effect or further effect to and/or taking any step or further steps pursuant to

and/or acting and/or further acting on the basis of the impugned award dated 15.5.85 passed by the Deputy Registrar, Co-operative Societies

(Industries), West Bengal as the sole Arbitrator. It is alleged that the claim of the respondent no. 4 Trass Engineers Co-operative Society Limited

as sought to be raised in the dispute is wholly untenable. The alleged award dated 15.5.85 is vitiated by the blemish of non-consideration of the

relevant materials on record and for taking into consideration of irrelevant materials. The impugned award passed by the respondent no. 3 (copy of

which annexure "E" to the writ petition) is alleged to be a nullity in the eye of law. It is further claimed that the award dated 15.5.85 is bad in law

inasmuch as the purported award has been challenged for various reasons as stated in the writ petition. The petitioners have also prayed for

necessary reliefs to restrain the respondent authorities from giving effect to the said award. The writ petition is contested and the allegations made

by the petitioners are controverted. Having heard the learned Advocates of both sides, it appears that the arbitration agreement is not required to

be in any particular form. What is required to be ascertained as to whether the parties have agreed that if disputes arise between them in respect of

the subject-matter of contract, such disputes shall be referred to arbitration and such an arrangement could be spelt out from the arbitration

agreement itself. It is argued with force that the present writ petition is quite maintainable in view of the decision reported in 1947(4) SCC 525

Kuntesh Gupta v. Hindu Kanya Mahavidalaya. It appears from the said decision that a Quasi-judicial authority cannot review its own order unless

the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the

question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. The provisions of the U.P. State Universities Act,

1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances it was held that the Vice

Chancellor acted wholly without jurisdiction in reviewing his/her earlier order. The review order of the Vice-Chancellor was, therefore, a nullity. It

was further held that an alternative remedy was not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly

without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 on the ground of existence of an alternative

remedy. After going through the said decision it appears to this Court that a Statute confers power upon certain authority to do acts in a certain

way; if by virtue of the said power provided in the statute, the authority concerned exercises the jurisdiction not correctly, the self same statute

provided a remedy of going in appeal. In that case it cannot be said that the person concerned has acted without jurisdiction, and without

preferring an appeal in terms of the statute one can come to the writ Court, and very order passed by the authority under the Statute can be

collaterally challenged in the writ jurisdiction. In a case where there is no statute nor any statutory power conferred upon the authority and under

the said circumstances any order is made beyond the scope of the statute such an order is palpably without jurisdiction and the same can certainly

be challenged within the scope of the writ jurisdiction. In the instant case, the award has been passed under the provision of the Arbitration Act.

The Arbitrator has acted under the Statute and any award passed by him is the subject of scrutiny in an appeal as provided in the statute itself.

2. In that, aspect, the attention of this Court is drawn to a decision reported in Smt. Rukmanibai Gupta Vs. Collector Jabalpur and Others, . It will

be apparent from the said decision that the Award was given in terms of the agreement and it cannot be challenged by filing a writ petition. The

procedure under Arbitration Act must be followed. The rights of parties being contractual, remedy by way of filing a writ, was held barred. The

attention of this court is further drawn to a case reported in 90 CWN 1153 (Nagendra Nath Chakraborty v. State of West Bengal & Ors.) where

the Division Bench of this Court decided that the Arbitration Act is a complete Code in itself and it provides for the remedy., The appellant in the

said case had chosen a wrong forum and moved the Hon"ble Court in its Constitutional writ jurisdiction. Writ was found to be not maintainable. I

have considered the facts of the present case and it appears that the facts and circumstances in the subject matter of the reported decision in AIR

1987(4) SCC 525 Supra are not the same as that of the present case. This Court finds support from the view expressed in Smt. Rukmanibai

Gupta Vs. Collector Jabalpur and Others, and 90 CWN 1153 Supra.

In my opinion, the writ petition is not maintainable and hence the same is rejected without any order as to costs. It is made clear that this Court has

not decided anything on merit as averred in the writ petition.