

(1993) 08 CAL CK 0003

Calcutta High Court

Case No: Civil Rule No. 7031 (W) of 1993

In Re: K.K. Barman

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 2, 1993**Citation:** (1994) 2 ILR (Cal) 443**Hon'ble Judges:** Susanta Chatterji, J**Bench:** Single Bench**Advocate:** Kamalesh Bhattacharyya, for the Appellant; Sumitra Dasgupta, for the Respondent

Judgement

Susanta Chatterji, J.

The writ petition was moved on April 22, 1993, in presence of the learned Advocate for the State Respondents. There was serious allegation against the Conciliation Officer and Assistant Labour Commissioner, Basirhat. Respondent No. 3, that he was taking illegal and irregular steps to harass the Petitioners and being satisfied prima facie, this Court directed the said authorities to be personally present in the Court with all proper records on May 20, 1993, when the matter would appear for orders top of of the list. All conciliation proceedings were stayed. Leave was granted to the learned Advocates for both sides to inform the concerned authority as to the order.

2. The matter appeared in the list on June 9, 1993 and the presence of the learned Advocate for the writ Petitioners and for the Stale, being Mr. Dasgupta, Advocate. It was noted in the order dated June 9, 1993, by this Court that Mr. Dasgupta, learned Advocate, had sent a communication to the Respondent No. 3 on April 28, 1993, that the said Respondent must appear on May 26, 1993, before this Court, but none appeared on behalf of the said Respondent No. 3 on May 26, 1993 and hence the matter was adjourned. In the said order dated June 9, 1993, it was further noted that Mr. Dasgupta, Advocate, submitted that the said Respondent No. 3 till then had not instructed him nor the said Respondent No. 3 was personally present in the Court pursuant to the order dated April 22, 1993. This Court prima facie found that the

Respondent No. 3 was trying, to avoid appearing before the Court in gross disobedience. This Court, accordingly, issued suo mode rule in contempt calling upon Sri K.K. Barman, Conciliation Officer and Assistant Labour Commissioner, Basirhat, Government of West Bengal, as to how cause why he should not be suitably dealt with or punished or sent to prison for his contumacious act and/or having failed to secure compliance of the Court's order dated April 22, 1993, or with such other suitable orders as to this Court may deem fit and proper.

3. Then the matter appeared on June 30, 1993, in the list. It was submitted that both Sri K.K. Barman, erstwhile Conciliation Officer and Assistant Labour Commissioner, Basirhat and Sri Ram Prasad Koyal, the present incumbent to that post are both personally present in the Court. Sri Koyal was made a party Respondent to the contempt rule as it was stated that he was present in the Court for effective adjudication of the dispute. Both of them were granted leave to file affidavits to explain their position or as to why the Petitioners were being harassed as alleged in the writ petition or as to why records were not produced and instruction was not given to Mr. Dasgupta, Advocate for the State. Pursuant thereto, both have filed affidavits before this Court.

4. Upon perusal of such affidavit of Sri K.K. Barman, it transpires that prior to April 15, 1993, he was the Assistant Labour Commissioner, Basirhat and by virtue of being the same, was the Conciliation Officer of Basirhat sub-division as per provision of Industrial Disputes Act, 1947. On April 15, 1993, he was transferred and he handed over charge to Sri Ram Prasad Koyal, the present incumbent. Sri Barman has further disclosed that steps were being taken in the matter, but nothing has been disclosed to him about the orders passed by this Court. Sri Barman, in this affidavit, has explained nothing as to why there is no appearance by the Respondent No. 3 pursuant to the order of Court, dated April 22, 1993. It is only pleaded that since he has been transferred on April 15, 1993, he had no knowledge of the orders of the Court and any development subsequent thereto.

5. Sri Ram Prasad Koyal, in his affidavit, has disclosed, inter alia, that pursuant to the direction of (his Court he has filed the said affidavit and has placed on record that Sri K.K. Barman, the previous Assistant Labour Commissioner of Basirhat, who was transferred to the office of the Labour Commissioner, West Bengal, Church Lane, Calcutta, in the month of April 1993 handed over charge of Basirhat in addition to his own charge of Bangaon with effect from April 15, 1993. He has stated that all the impugned notices were issued by Sri Barman aforesaid and not by him. On May 20, 1993, it is stated that Sri R.P. Koyal received a letter from Sri Kamalesh Bhattacharyya, Advocate, for the writ Petitioners dated April 22, 1993, addressed to the Conciliation Officer and Assistant Labour Commissioner, Basirhat, intimating that such authority should appear before the Court on May 26, 1993, with records and the matter has been fixed for further hearing on May 26, 1993. Further, that an interim order has been passed in the matter. It is further stated that on the same

day, May 20, 1993, Sri Koyal, being the Conciliation Officer and Assistant Labour Commissioner, wrote a letter to Sri Barman, erstwhile Assistant Labour Commissioner, forwarding the file of dispute case as well as the said letter of Sri Kamalesh Bhattacharyya, Advocate, making him either to deal with the instant case or to send back the file along with note sheet of the dispute case since the said note was not available in the file. It is stated that the said letter was received by Sri Barman on May 21, 1993. It is also stated that at all material times the said dispute case was dealt with by Sri Barman and not by Sri Koyal, as such Sri Koyal was in the dark about the result of the discussions/findings of Sri Barman. Sri Barman replied to Sri Koyal that the letter of Sri Bhattacharyya, Advocate, was given So Sri R. Bhattacharyya, Inspector, Minimum Wages, posted at Church Lane, Calcutta and requested Sri Koyal to meet Sri Bhattacharyya, Inspector, Minimum Wages and further, that if necessary, Sri Barman might accompany Sri Koyal to High Court. But, Sri Barman, in his letter expressed the uncertainty of holding of Hon"ble High Court on May 26, 1993, as one of the retired Judge had died and the High Court was then under Summer Vacation.

6. Curiously enough, all the facts narrated by Sri Koyal in his affidavit are absent in the affidavit of Sri Barman as stated before. Sri Barman has emphasized that he was not aware of any development after his transfer on April 15, 1993. Then, either Sri Barman has presented the facts in his affidavit purposely or Sri Koyal has failed to place the facts before this Court. It is patent that Sri Koyal was aware of tire letter of communication of Sri Kamalesh Bhattacharyya, Advocate, as aforesaid. None of them has explained anything as to the placing of records before the Court or appearance before the Court although they were aware of the date of appearance before the Court. They have only stated that there was closure of this Court as a retired Judge had died. Such contention has no merit. The significant fact is that on May 26, 1993, this Court did not pass any order and adjourned the matter till June 9, 1993, when the suo motu contempt rule was issued as none of the aforesaid persons appeared. Both the affidavits do not show any bona fide absence as on May 26, 1993. It is a fact that they both have received the letter containing the order passed by this Court, as stated in their affidavits. They understood the seriousness of the allegations in the writ petition as to harassing, the writ Petitioners and their explanation for non-appearance on May 26, 1993; are found to be incorrect. Top of it, they are not found to be apologetic nor do they express any regret for their disobedience of Court's order. They have, on the other hand, tried to justify their illegal facts. Both affidavits contain statements which are contrary to the materials on record and those do not inspire any confidence in the mind of the Court. Both the affidavits are accordingly rejected. This Court finds both Sri K.K. Barman and Sri Ram Prosad Koyal guilty of contempt of Court.

7. This Court imposes penalty of Rs. 250 each (Rupees two hundred and fifty only) on both of them to be paid by them within a week, in default to suffer imprisonment of seven days each.