

(2004) 07 CAL CK 0009

Calcutta High Court

Case No: Writ Petition No. 10909 (W) of 2004

ICI and Associated Companies
Employees" Union and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 28, 2004

Acts Referred:

- Industrial Disputes Act, 1947 - Section 37(1)

Citation: (2005) 2 CHN 129

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Jayanta Dasgupta and Septarshi Guha, for the Appellant; Dipak Kr. Ghosh and Ranjay De for the respondent No. 3., for the Respondent

Final Decision: Dismissed

Judgement

Amitava Lala, J.

In this writ petition, the Order No. 26 dated 14th June, 2004 passed by the First Industrect(sic) Tribunal is under challenge. Such order is of an interlocutory application whereunder the petitioners herein made a prayer for the purpose of getting adjudication about the abuse of process till such time. A Corrigendum is issued by the appropriate Government. The Corrigendum was necessitated for the purpose of rectification of earlier notification by incorporating the word "workmen" instead and place of the word "workman", although it appears that the Union is espousing the cause. The Tribunal held that on the basis of anticipation of modification of the order of reference by the Government or for the purpose of rectification on the presumption that it will be amended, the Tribunal cannot wait indefinitely. Therefore, such application was dismissed by fixing a date for hearing on merit. According to me, generally the singular includes the plural. Therefore, pertinent question is whether by virtue of incorporation of the word "workmen" in the place and instead of the word "workman", the referring authority committed

any gross mistake for which the proceeding can be vitally effected or not. A party may take various points within the four corners of the preliminary point if it is available under the Act and the Rules but that does not necessarily mean that such point will be accepted by the Tribunal at the time of hearing. In the judgment reported in [Deepak Industries Limited and Another Vs. State of West Bengal and Others,](#) it has been held by a Division Bench of this Court following the Supreme Court's judgment reported in [The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another,](#) In re : The Bombay Union of Journalists and Ors., that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether on the date of the reference the dispute was taken up or supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. Since it appears to this Court that at the time of reference, the Union espoused the cause on behalf of the individual workman, I do not find incorporation of the word "workmen" in the place and instead of the word "workman" will cause any material difference. It is clearly understood from the issues of reference what issue/s the authority wanted to refer. Therefore, refusal by the Tribunal caused no injustice to the petitioners. Hence, non-grant of adjournment by the Tribunal in this cause cannot be held to be perverse finding. Moreover, the reference was made on 17th December, 2002 and the application was made on 27th February, 2004, Hence by the long lapse of time, although the witness action has not started, the venture of the petitioners cannot be allowed to stop the proceeding in this cause.

2. The next point has been taken by the petitioners that this Tribunal is biased against the petitioners. For example the petitioners show that in the earlier occasion by an Order No. 32 dated 21st December, 2001, the Court was pleased to adjourn the matter when an application was made by the Company for withdrawal of the application and for filing in different Court/Tribunal u/s 37(1) of the Industrial Disputes Act, 1947. According to me, the question of biasness relates to person but not the chair. Therefore, it is an individual action not applicable for the Court or the Tribunal but whosoever is sitting therein. Since it appears that the learned Judge who passed the order in the earlier proceeding of 2001 and the learned Judge who is hearing the matter, are different persons the submission as regards biasness is illusory in nature. Moreover it is to be remembered by the learned Lawyers of the Court or Tribunal that in the rarest of the rare case with cogent grounds established to be true such ground can be taken but not very often. That apart, gravity of the situation is to be understood in such case. If one by making an application before a Court or Tribunal wants to withdraw any proceeding, then obviously the Court or the Tribunal will allow the same unless a fraud etc. is apparent or pointed out at the relevant point of time because those have no personal interest in respect of the matter. Such situation cannot be equitted with the present situation. Last but not the least, the reference of that case and the reference of this case are totally

different.

3. Therefore, taking into totality of all the aspects of the matter, I am of the view that invocation of the writ jurisdiction by the petitioners hereunder is not made with clean hands. As a result whereof, I cannot pass an affirmative order in favour of the petitioners. Therefore, the writ petition stands dismissed. But considering the financial position of the workmen, I am not imposing any cost but giving warning hereunder not to misuse the power of the Writ Court in this way.

4. Let urgent xerox certified copy of this order, if applied for, be given to the Id. Counsel for the parties within the period of a fortnight from the date of putting the requisites.