(1988) 04 CAL CK 0003

Calcutta High Court

Case No: Matter No. 1473 of 1987

Birla Industrial and Technological Museum		APPELLANT
	Vs	
Seventh Industrial Tribunal and Others		RESPONDENT

Date of Decision: April 15, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 15, 15(2), 15(2)(b), 2(3)

Citation: 92 CWN 1205

Hon'ble Judges: Prabir Kumar Majumdar, J

Bench: Single Bench

Advocate: Partha Sarathi Sengupta and Asim Banerjee, for the Appellant; Srenik Singhi for the Respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

Prabir Kumar Majumdar, J.

The petitioner has challenged by this application an order dated 21st March, 1987 passed by the Seventh Industrial Tribunal. The copy of the said order is annexure "I" to the petition. The respondent No. 3 Barun Kumar Das is employed as Store Supervisor at Birla Industrial and Technological Museum, Calcutta, the petitioner herein. He was so employed from 6th August, 1969 and his services were terminated by way of dismissal on 3rd August,. 1984. It is alleged by the petitioner that during the period when the said respondent No. 3 was working as Store Supervisor certain acts of irregularities stated to have been committed by the respondent No. 3 came to the knowledge of the authorities and as a result the respondent No. 3 was placed under suspension on 3rd October, 1975 and the said suspension order was followed by Charge-sheet dated 2nd March, 1976. The Board of Enquiry was constituted to enquire into the charges levelled against the

respondent No. 3 and after the conclusion of enquiry proceedings initiated against the respondent No. 3 the petitioner accepted the findings of the said enquiry and decided to dismiss the respondent No. 3 from service and did so by an order dated 3rd August, 1984.

2. A dispute was raised by the respondent No. 3 with the Conciliation Officer pertaining to the said dismissal whereupon the. Government of West Bengal by an order of reference No. 2677-IR/IR/l11-186/81 dated 30th November, 1985 referred the following issue for adjudication to the Seventh Industrial Tribunal, the respondent No. 1.

Whether the dismissal of Shri B. K. Das from service is justified? to what relief, if any, is he entitled?

3. On 14th February, 1986 a written statement was filed by the respondent No. 3. In the written statement submitted on behalf of the petitioner it was contended that the dismissal was effected by conducting an enquiry with scrupulous regard for the requirement of rules of natural justice and the dismissal order was legal and valid. Besides that, the petitioner also raised a preliminary objection as to the maintainability of the reference on the ground that the petitioner was not an industry as contemplated u/s 2(3) of the Industrial Disputes Act, 1947. It was also objected by the petitioner by way of preliminary objection that the reference was not competent since no dispute had been raised by the employee with the employer so as to transform the alleged dispute to be an Industrial Dispute.

4. It is further alleged by the petitioner that when the said adjudication proceeding before the concerned Industrial Tribunal was ripe for hearing on 12th May, 1986, an application was filed by the respondent No. 3 praying for interim relief u/s 15(2)(b) as introduced to the Industrial Disputes Act by West Bengal Amendment Act. The said application u/s 15(2)(b) of the Industrial Disputes Act as amended by Industrial Disputes (West Bengal Second Amendment) Act, 1980 was contested by the petitioner taking, inter alia, the grounds that the said application could not be disposed of without a determination of the question as to whether the petitioner was an industry or not or whether there was only dispute or industrial dispute raised between the parties. It was also submitted by way of objection by the petitioner to the said application of the respondent No. 3 u/s 15(2)(b) of the Industrial Disputes Act as amended by the Industrial Disputes (West Bengal Second Amendment) Act, 1980 that the application was not maintainable since no prima facie case has been made out for interim relief or for workman''s entitlement thereto"..

5. At the time of hearing of the said application of the respondent No. 3, the petitioner raised a plea that the said, application for interim relief could not be entertained without deciding the preliminary points regarding maintainability of the order of reference as taken in the petitioner''s objection application.

6. It is alleged by the petitioner that on 20th March, 1987 an application was made on behalf of the petitioner before the relevant Tribunal to hear the point of the maintainability of the said application for interim relief and also to decide the maintainability of the reference as taken in the objection petition filed by the petitioners.

7. It is further alleged by the petitioner that the petitioner pressed for hearing of the application regarding the objection as to the maintainability of the application for interim relief, but without hearing the said objection as to the maintainability of the reference as also as to the point whether the petitioner was an industry or not, the respondent No. 1 took up the said application for interim relief filed by the respondent No. 2 and decided in favour of the respondent No. 3 granting the interim relief as admissible under the law.

8. It is alleged by the petitioner that it is incumbent upon the respondent No. 1 before disposing of and deciding the said application for interim relief, to hear and decide the points of objection raised by the petitioner as to maintainability of the reference and without deciding the same the Tribunal had no jurisdiction to dispose of the application for interim relief and to grant the same. It is also alleged that the Tribunal by making the impugned order violated the. principles of natural justice and also acted contrary to the law. It would appear from the impugned order that the Tribunal directed that the respondent No. 3 would be entitled to interim relief at the rate of 75% of Rs.1400/- being his pay and he would further be entitled to recover 75% of the said Rs. 1400/- from the date of the order of dismissal.

9. Petitioner also takes a point by this writ application that Sections 15(2) of the Industrial Disputes Act as amended by Industrial Disputes (West Bengal Second Amendment) Act, 1980 is ultra vires the Constitution.

10. The Learned Advocate for the petitioner has argued that without deciding and disposing of the said preliminary objection Tribunal cannot entertain the application for interim relief and grant interim relief to the respondent no. 3 as prayed for by him. It is, however, submitted on behalf of the petitioner that if the petitioner succeeds on this objection and gets the impugned order set aside on this preliminary objection as raised by the petitioner before the respondent no. 1, then the petitioner would not press the ground as to the question of Section 15(2) being ultra vires the Constitution as taken in this writ application.

11. After hearing the submission of the respective parties, it is decided to consider this writ application only on the question of maintainability of the application for interim relief filed by the respondent no. 3 before the respondent no. 1 on the ground as stated in the petition, and thereafter, if necessary, the question as to the said section being ultra vires the Constitution would be taken up.

12. It has been submitted on behalf of the respondent no. 3 that the impugned order is an interlocutory order and interference of this Court with such order in the

exercise of this jurisdiction under Article 226 of the Constitution is not called for. It has also been contended on behalf of the respondent no. 3 that this very question cropped up before a Division Bench of this Court in the case of Gauges Printing Ink Factory Employees'' industrial Co-operative Society Ltd., and Ors. v. Seventh Industrial Tribunal of West Bengal & Ors., reported in 1986(2) CHN 243 and while considering the various aspects of Section 15(2)(b) of the said Industrial Disputes Act as amended by the West Bengal Amendment Act, it has been held that it was just and proper for this Court to entertain the writ petition wherein the subject matter of challenge was an interlocutory order.. It has further been contended by the. respondent that it was the opinion of the Division Bench of this Court in the said decision that in case of the interim award the Tribunal may be required to adjudicate the merits of the disputes for the purpose of making the award but the interim relief is for the interim assistance or protection extended to a party and primarily the object of the said Section is to support him in fighting the case during the pendency of the adjudication of an industrial dispute raised between the employer and the employees.

13. Also referring to the said bench decision it has been contended on behalf of the respondent no. 3 that the object and purpose of introducing the Section 15(2)(b) has been categorically held to be statutory obligation of the tribunal to grant interim relief within, 60 days from the date of reference and in considering such application for interim relief the Tribunal is not required to go into the merit of the dispute. The Tribunal according to the said Division Bench, as contended on behalf of the. respondent no. 3, is to see whether there is any prima facie case for granting interim relief to the concerned workman without going into the question as to merits of the dispute as raised between the parties. It has been contended on behalf of the respondent no. 3 that the Division Bench of this Court in the said decision had come to a conclusion that if such prima facie case is found then the Tribunal on the application of the workman should grant such interim relief as prayed for.

14. Before I refer to the said bench decision which is reported in 1986 (2) Calcutta High Court Notes 243 let me refer to the provision of Section 15(2)(b) of the Industrial Disputes Act as amended by the Industrial Dispute (West Bengal Second Amendment) Act, 1980. The said 15(2) reads as follows

15(2) Where an industrial dispute has been referred to a labour court or tribunal, is shall -

(a) after filing of statements and taking of evidence give, day to day hearing and give its award, upon determination or decision in the manner specified in 17B without any delay;

(b) upon hearing the parties to the dispute, determine within a period of 60 days, from the date of reference under sub-section (1) of Section 10 or within such shorter period as specified in the order of reference under sub-section (1) of Section 10, the

quantum of interim relief admissible, if any;

Provided that the quantum of interim relief relating to discharge, dismissal, retrenchment or termination of service of workman shall be equivalent to subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969.

15. The said section provides that where an industrial dispute has been referred to a Labour Court or Tribunal it shall grant interim relief in the manner provided in the said Section. It further provides that upon hearing the parties to the dispute, the Tribunal would determine within a period of 60 days from the date of reference or within such period as specified in the order of reference, the quantum of interim relief admissible and such quantum relating to discharge, dismissal, retrenchment of termination of service of the workman shall be equivalent to subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969. It appears that in enacting Section 15(2) of the Industrial Disputes Act as introduced by the said West Bengal Amendment Act, the legislature intended to give some relief''s to the indigent workmen when fighting a cause against the management where always the fight is between two unequal. The object behind this enactment as it seems, is to provide some interim relief to the workman who has to fight a long time of adjudication in order to get final relief. It also appears from the said section that Tribunal or labour Court or any other appropriate authority would consider an application for interim relief upon hearing'' the authorities to the disputes and determine the quantum of interim relief which should be equivalent to the subsistence Allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969. The Learned. Advocate appearing for the petitioner as contended that before taking up the application for interim order filed. (sic) workman, it is necessary, for the Tribunal to hold a preliminary adjudication with regard to the merit of the dispute and record a strong prima facie case on such merits in favour of the applicant for interim relief. The Learned-advocate has also submitted that as has been held by the Division Bench, the Ganges Printing Ink Factory Employees Case (Supra) that in disposing of the application for interim relief the Tribunal should consider the matters, namely, (i) admissibility, (ii) any objection as to the sustainability of the reference and (iii) effect of the grant or its refusal on the employer or the workmen.

16. The Learned Advocate has also submitted that the respondent no. l the Learned Tribunal while disposing of the applicant of the respondent no. 3 for grant of interim relief has failed to take into consideration the matters as indicated in the said bench decision. The Learned Advocate for the petitioner has submitted that the Tribunal in disposing of the said application for interim relief and granting the same has observed that if there is a reference before the Tribunal it is statutory obligation of the Tribunal to grant interim relief. While making the said observation the Tribunal has quoted the observation of this Court made in the said bench decision that "once

such reference is received by the tribunal it fixes a date of appearance and then requires the parties to file their respective cases. Until such time the respective cases are not before the tribunal, yet the provision enjoins that within 60 days from the date of reference the tribunal is required to make the necessary orders for interim relief.

17. It has been submitted by- the Learned Advocate for the petitioner that the Tribunal has taken the said observation of the bench of this Court completely out of context and without fully appreciating the ultimate decision of this Court in the said case. He has also argued that the Tribunal as it would appear from the impugned order itself, has completely disregarded the matters to be considered before entertaining and deciding the application for interim relief, namely, the question or objection as to the sustainability of the reference. The Learned Advocate argues that since a specific objection has been taken by the petitioner before the respondent no. 1 that the reference by the appropriate Government is not an industry within the meaning of Industrial Disputes Act, the Tribunal cannot entertain and decide the application for interim relief without deciding the question as to the sustainability of the reference. Therefore, according to the Learned Advocate for the petitioner, the Tribunal completely failed to exercise its jurisdiction in a proper manner and, in fact, has no jurisdiction to entertain and decide the said application for grant of interim relief without deciding and disposing of the said preliminary objection raised by the petitioner before the Tribunal.

18. The Learned Advocate for the respondent no. 3 has argued that besides his point as indicated before that the impugned order being in the nature of interlocutory order, the court in the exercise of jurisdiction under Article 226 of the Constitution cannot interfere with the said order, the Tribunal cannot go into the question as to the merits of the main stage while considering the application for grant of interim relief. It is the argument of the Learned Advocate for the respondent no. 3 that in considering the application for grant of interim relief, the Tribunal has only to come to a finding that there is prima facie case in favour of the party claiming the relief and if in considering the said question the Tribunal is called upon to decide the main dispute at this stage then that according to the Learned Advocate for the respondent no. 3, would amount to an adjudication of the entire dispute between the parties at this interlocutory stage which, according to the Learned Advocate for the respondent no. 3, is not the intent of the said section 15(2) of the Industrial Disputes Act, as introduced by the said West Bengal Amendment Act. He also argues that adjudication starts on a reference being made to the Tribunal and once such reference is received by the Tribunal or before the Tribunal, the Tribunal gets jurisdiction to consider and decide the application for grant of interim relief irrespective of the fact that the main issue between the parties, be it as to- the maintainability of the dispute or other question as to the merits of the dispute, inasmuch as this is an interim relief and not the final one which would ultimately be decided in the main adjudication resulted in from the reference by the

appropriate Government. It is also his argument that the intention of the legislature in introducing such a provision, that is Section 15(2),is that the issue with regard to the interim relief should be adjudicated even before the-case of the parties touching the merits of the dispute goes to the Tribunal. Therefore, according to the Learned Advocate for the respondent no. 3, it is not necessary for Tribunal nor it is incumbent upon the Tribunal to hold a preliminary adjudication with regard to the merit of the dispute before'' deciding and disposing of the application for grant of interim relief.

19. Now I refer to the aforesaid bench decision reported in 1986(2) CHN 243. There the service of the workman drawing a salary of Rs.1038/-per month was terminated by the appellant by service of a notice assigning no reasons whatsoever for such discharge. Such discharge raised an Industrial Dispute. The Government of West Bengal by an order made a reference to the Tribunal for adjudication of the dispute as to whether the termination of service of the workman was "justified. Pending the reference the workman" concerned, made an application for grant of interim relief under the provision of Section 15(2) of Industrial Dispute Act as introduced by the West Bengal Amendment Act. That application was opposed by the Management on two grounds namely, (i) prayer was barred by Limitation and (ii) the applicant not being a workman within the meaning of the Act, the reference itself was incompetent and as such no interim relief could be granted. There the Tribunal over-ruled the plea raised by the Management and found that the applicant had been able to make a prima facie case that he was a workman within the meaning of Section 2(S) of the Industrial Disputes Act, and the mere fact that he was drawing a salary of more than Rs.10007- would not detract from the said position when it had not been established prima facie that the applicant was being employed in any supervisory capacity. Tribunal, therefore, allowed the said application for grant of interim relief. The said order of the Tribunal was challenged by a writ petition before this Court and a Learned Single Judge of this Court dismissed the said writ application by the Management. From the said decision, the Management preferred an appeal before the Division Bench of this Court.

20. While dealing with the said appeal, the Division Bench, inter alia, observed that clause (b) of Section 15(2) of the Act enjoins the Tribunal to grant such interim relief as would be admissible and that within 60 days from the date of reference. The time specified is with regard to the discharge of the obligation imposed on the statutory tribunal and it cannot be read as a. rule of the limitation for preferring any claim for interim relief. It has also been observed by the Division Bench that once application is made by the workman for grant of interim relief after reference being made it is an obligation of the statutory tribunal to deal with and allow such application if it is found by the tribunal that there is a strong prima facie case in. favour of the party claiming the relief. It has been observed by the Division Bench in the said appeal that when Sectionl5(2)(b) speaks of admissible interim relief, it speaks of such relief''s which are proximately correlated to the main relief and not foreign to the

dispute under adjudication (sic) is not otherwise saved by any regulation. It is also observed that admissibility may be one of the considerations in the process of adjudication of an interim relief but all the consideration which got the tribunal in exercising its power in that regard are not tests or admissibility. This Court in this decision further observes: "The question, therefore, still remains as to what are the matters which must enter into consideration of the tribunal in adjudicating the claim for interim relief. In our opinion, the rules governing similar dictation in a suit cannot be invoked but maters to be considered by the tribunal should be (i) admissibility, (ii) any objection as to the sustainability of the reference and (iii) effect of the grant or its refusal on the employer of the workman. But for reasons given hereinbefore we find it difficult to reconcile, the consideration of the merits and/or adjudication of a prima facie case at the stage of granting interim relief''s with the scheme prescribed by the statute in Section 15(2)(b)".

21. In the above case, the Management, inter alia, raised an objection that the applicant was not a workman within the meaning of Industrial Disputes Act and as such the reference was not competent. The Tribunal in that case considered the said objection and found and held that the applicant there had been able to make out a prima facie case that he was a workman within the definition of Industrial Dispute Act and therefore, allowed the application for grant of interim relief.

22. The Learned Advocate for the petitioner has submitted that it is true that at this stage of consideration of the application for grant of relief, the Tribunal is not required to adjudicate the main dispute, that is, whether the termination of the services of the petitioner was justified or not. But in deciding this application, the Tribunal is very much required to consider the maintainability of the reference before entertaining and deciding the application for grant of interim relief, and the bench decision referred to above supports his contention that the matters to be considered by the Tribunal should be admissibility, any objection as to the sustainability of the reference and effect of grant or its refusal on the employer of the workman. It is not dispute, according to the Learned Advocate for the petitioner, that the Tribunal did not consider or refused to consider the petitioner''s objection as to the sustainability of the reference which was specifically raised before the Tribunal by an application made to the Tribunal at the hearing of the respondent''s application for interim relief. It is further submitted by the Learned Advocate for the petitioner that instead of deciding the very objection as to the sustainability of the reference, the Tribunal disposed of the application and granted interim relief by holding that since there is a reference before the Tribunal, it was the obligation of the Tribunal to grant interim relief to the respondent and the objection raised by the petitioner company did not stand in the way of granting interim relief.

23. I see some substance in this argument of the Learned Advocate for the petitioner. It is true that the Tribunal in considering an application by a workman for grant of interim relief is not required to go into the main dispute i.e., whether the

termination of the services of the respondent no. 3 was justified or not, as was the issue before the Tribunal referred by the appropriate Government. But, as has been held by the Division Bench of this Court referred to above, to which I respectfully agree, that in disposing of the application for grant of interim relief, the matters to be considered by the Tribunal should be admissibility, and any, objection as to the sustainability of the reference. It is no doubt true that specific objection has been taken by the petitioner in opposition to the application of'' the respondent no. 3 for grant of interim relief that the petitioner was not an industry within the meaning of the Industrial Disputes Act and as such the reference by the appropriate Government was not maintainable. It is also not in dispute as it would appear from the impugned order that the Tribunal did not decide the question as to the sustainability of the reference at least prima facie.

24. In my view, agreeing with the views taken by the Division Bench in the case referred to above, the Tribunal fell into an error in entertaining and deciding the application for grant of interim relief without deciding the objection as to the sustainability of the reference.

25. For the reasons aforesaid, the impugned order is liable to be set aside.

26. This writ application should succeed and the impugned order of the respondent no. 1 being order no. 20 dated 21st March, 1987 is set aside. Since this writ application succeeds on the first point, I need not go into the question whether the said Section 15(2) of the Industrial Disputes Act as introduced by the said West Bengal Amendment Act is ultra vires the Constitution. This question is left open.

27. This writ application, therefore, success. The impugned order of the Tribunal dated 21st March, 1987 is set aside. There will be no order as to costs.

I also make it clear that I have not made any observation nor I have endeavored to go into the merits of the case including the question whether the reference is maintainable or not.