

Calcutta Electric Supply Corporation Limited Vs P. C. Sen and Others

Court: Calcutta High Court

Date of Decision: July 28, 1978

Acts Referred: Constitution of India, 1950 " Article 226
Industrial Disputes Act, 1947 " Section 11, 12, 33, 4

Citation: (1979) 1 LLJ 328

Hon'ble Judges: Sankar Prasad Mitra, J; Salil Kumar Dutta, J

Bench: Division Bench

Judgement

Salil Kumar Datta, J.

This is an appeal against the judgment of Sabyasachi Mukharji, J., dated August 25, 1977, whereby the rule

obtained by the appellant, the Calcutta Electric Supply Corporation Ltd. (hereinafter referred to as the company), on an application under Article

226 of the Constitution was discharged. The facts giving rise to the proceeding, according to the company are as follows:

The company is carrying on the business of generation and distribution of electricity for reward and the respondent No. 2, Amaresh Roy, was a

clerk in its revenue department. On August 3, 1976, the company dismissed Roy for having misappropriated money belonging to the company. At

the time of dismissal no conciliation proceeding under the Industrial Disputes Act, 1947, was pending between the company and its workmen

before any conciliation officer. As a matter of abundant caution the company made an application before P.C. Sen, conciliation officer and Joint

Labour Commissioner, Government of West Bengal, u/s 33(2)(b) of the Industrial Disputes Act for approval of the said dismissal. It was stated in

the application which is dated August 3, 1976, that the said workman was asked to show cause against the allegations of having illegally collected

cash from the consumers of the company as specifically named against electric bills for about Rs. 28,000 and also for having misappropriated the

same. The workman replied to the said show-cause notice which was found to be unsatisfactory and thereafter in accordance with its standing

orders an Enquiry Committee was constituted. Enquiry was held on June 25, 1975, and the appellant was given opportunity to defend his case.

After the conclusion of the enquiry the enquiry proceeding along with the findings of the Enquiry Committee were forwarded to the Deputy Chief

Commercial Officer who sent it again to the Chief Commercial Officer. The management considered the enquiry report and came to the conclusion

that the workman was guilty of the charges proved against him and that he should be dismissed in the absence of any extenuating circumstances.

The company thereafter dismissed the workman concerned by order dated August 3, 1976, and offered him one month's wages in terms of

Section 33(2)(b) of the Industrial Disputes Act. The company, on the same day, submitted an application to the conciliation officer and Joint

Labour Commissioner, Government of West Bengal, for approval of the action taken as it might be contended that certain industrial disputes

between the company and its workmen were pending before him. It was accordingly prayed that the approval should be given to the action taken

by the company dismissing the workman as stated above.

2. This application came up before P. C. Sen, conciliation officer and Joint Labour Commissioner, Government of West Bengal, the respondent

No. 1, who, though he was also the conciliation officer, was not described as such in the company's application under Article 226. P.C. Sen, as

the conciliation officer, heard the parties and passed an order on April 5, 1977, on the said application. It was held that in regard to two disputes,

namely, ""absence due to sickness"" and ""age verification"" there was no industrial disputes pending before the conciliation officer. In regard to the

Charter of Demands, which was the third item of dispute, it appears the Co-ordination Committee of CESC Unions submitted a charter of

demands to the Joint Labour Commissioner, West Bengal, on April 17, 1976, whereon the said Officer issued a notice to the company and the

unions to attend tripartite meeting at the chamber of the Labour Minister at Writers Buildings on April 26, 1976, for discussion. After protracted

discussion, a settlement was reached on February 10, 1977, in respect of some disputes and there was another tripartite settlement which was

signed on March 31, 1977, in respect of some other disputes. The conciliation officer further stated in his said order that a report u/s 12(4) of the

Industrial Disputes Act was submitted by him, when at one stage, prospect for the settlement seemed to be bleak. This report was filed in the

month of November, 1976, to the Labour Department, Government of West Bengal. It was held that the company dismissed the workman from

service on August 3, 1976, during the pendency of the conciliation proceeding in respect of certain dispute particularly on the charter of demands

and, therefore, the company's contention in respect thereof was erroneous and provisions of Section 33(2)(b) were attracted in this case. The

order concluded with the following directions:

the undersigned as a conciliation officer, therefore, deemed it fit to order that the company's preliminary objections regarding coverage u/s 33(2)

(b) of the Industrial Disputes Act are not tenable in law and in fact. The CESC management and the worker concerned are, therefore, requested to

appear before the undersigned for further hearing of the case on 22-4-77 at 3-30 p.m.

The petitioner moved this Court against this order on June 9, 1977, and obtained a rule calling upon the respondent No. 1, P. C. Sen, the Joint

Labour Commissioner of the Government of West Bengal, the workman as also the State of West Bengal to show cause why a writ in the nature

of certiorari should not be issued setting aside, cancelling or quashing the order dated April 5, 1977, passed by the respondent No. 1 and also why

a writ in the nature of prohibition should not be issued commending them not to proceed further in the said application or to exercise jurisdiction in

any manner in respect thereof. There was, it appears, a stay of further proceeding in the meantime till the disposal of the rule.

3. Cause was shown by the workman stating that at the time of his dismissal there was a conciliation proceeding pending which terminated in the

two settlements mentioned above. As the conciliation was pending the company made an application u/s 33(2)(b) of the Industrial Disputes Act.

There was an affidavit-in-opposition affirmed by the said P.C. Sen, the Joint Labour Commissioner, respondent No. 1, on July 28, 1977, in which

it was stated that pursuant to the notice given on the charter of demands dated April 17, 1976, reference was made to the tripartite level for fresh

conciliation in accordance with the bipartite agreement dated June 28, 1975. It was stated further therein as follows:

...The subsequent meetings and conferences before the Labour Minister, Government of West Bengal, where in most cases the conciliation officer

was present were a part of the conciliation proceedings by the Conciliation Officer. Section 12(2) of the Industrial Disputes Act provides that the

Conciliation Officer may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the

disputes. Meetings and conferences before the Labour Minister, Government of West Bengal, do and did in the instant case form a part of my

attempt to induce the parties to come to a fair and amicable settlement of the disputes.

It was further stated that the conciliation proceedings were continuing and in the midst of such proceedings some restive workers took some form

of action in the context of which a partial settlement of the charter of demands was reached on February 10, 1977, in course of conciliation

proceedings and signed by the conciliation officer and this was followed by another settlement on March 31, 1977. All these documents were

signed by the deponent P.C. Sen as the conciliation officer with the full knowledge of the parties. It was further stated that the report u/s 12(4) was

submitted by the conciliation officer to the Government of West Bengal on November 11, 1976 and the subsequent meetings of the Labour

Minister did not make it a bad report as alleged by the company.

4. The company filed an affidavit-in-reply to the affidavit of the workman but it appears no affidavit-in-reply was filed to the affidavit-in-opposition

of P.C. Sen, the Joint Labour Commissioner.

5. The learned Judge was of opinion that the dispute about the age verification was a subject-matter of the conciliation proceeding started on June

2, 1976, which was pending at the relevant date, i.e., dated of dismissal of the workmen on August 3, 1976. In regard to the charter of demands it

was "also clear that there were conferences initiated and attended by the conciliation officer where the dispute was negotiated as indicated above

which resulted in the settlements of the disputes as aforesaid. During the pendency of the disputes, the conciliation officer in or about November,

1976, made a report contemplated u/s 12(4) of the Industrial Disputes Act. The Court further held on consideration of the cases cited that the

mere participation of the Minister as such would not make any proceeding not a conciliation proceeding provided it is shown that the conciliation

officer was ""there to discharge his duties and his discretion to ensure fair settlement between the parties"". In this case there was evidence that

proceedings so initiated ultimately led to settlements and there was no evidence that the conciliation officer did not retain his superintendence over

the terms bargained by the parties. The Court further held that the employer is entitled to seek, as a matter of caution, sanction or opinion of the

appropriate authority as to whether any conciliation proceeding or industrial dispute was pending or not. In the view that was taken as indicated

above, the application was dismissed and the rule was discharged, by order dated August 25, 1977, and the present appeal, as already stated, is

against this decision.

6. At the hearing it has been contended by Mr. Dutta, learned Junior Standing Counsel, that, of the three items of dispute, namely, (i) absence due

to sickness, (ii) age verification and (iii) charter of demands, the first item of the disputes was not pending. According to the company the said

dispute related to the implementation of the relevant clauses of the standing orders of the company on which there could be no industrial dispute.

As to the dispute in regard to the age verification, Mr. Dutta said that the matter in question was filed prior to the material date and as such it could

not be said that there was any conciliation proceeding pending thereon. The dispute, however, relates to the third item, the charter of demands,

which was pending on the material date.

7. It may be mentioned here that in respect of the charter of demands a memorandum of settlement was signed between the parties which provides

the following terms:

(a) the conciliation proceedings pending on the tripartite level on the joint charter of demands will be treated as concluded with the signing of

tripartite agreement on the " Leave Travel Concessions " as a part settlement of the charter;

(b) the remaining issues of the Charter of Demands will be discussed at bipartite level with a view to reaching a settlement;

(c) the parties (i.e., the company and any of the unions constituting the Coordination Committee) will be at liberty to refer the issue to tripartite level

whenever any of them will desire to do so, when fresh conciliation will start in the matter .

This settlement was entered into on June 28, 1975, by and on behalf of the company and also the workmen's unions.

8. Mr. Gin walla, learned Counsel appearing for the appellant-company, submitted that whatever conciliation proceeding was pending prior to

June 28, 1975, was to be treated as concluded with the signing of the bipartite agreement on leave travel concessions as a part settlement of the

charter of demands. The agreement on leave travel concessions was signed on the same date, i.e., June 28, 1975. It was clear that the conciliation

proceedings then pending on the charter of demands was to be treated as concluded as provided thereunder. This also finds support in the other

clause of this settlement which says that the remaining issues would be discussed at the bipartite level and the parties would be at liberty to refer the

issues the remaining unsettled to the tripartite level whenever any of them would so desire when fresh conciliation would start in the matter. It is

obvious, therefore, that on or about in June 28, 1975, the conciliation proceedings then pending came to end.

9. It is now to be considered whether there was any conciliation proceeding thereafter and was pending prior to the material date, i.e., August 3,

1976, and on this issue the parties are at variance. It appears that the Co-ordination Committee of the Unions submitted a representation on April

17, 1976, addressed to P.C. Sen, as Joint Labour Commissioner, alleging that though several meetings have been held with the management at

bipartite level as well as before the Minister of Labour at tripartite level no settlement was reached due to the adamant attitude of the company. In

accordance with Clause (c) of the settlement of June 28, 1975, the unions referred the pending dispute for fresh conciliation. On this letter P.C.

Sen, Joint Labour Commissioner, issued a notice on the company and the four unions of its workmen directing them to send their representatives

to attend tripartite meetings to be held in the chamber of the Labour Minister at Writers Buildings on June 26, 1976, at 3 p.m. and the discussion,

if necessary, would be continued on 27th and 28th June as well".

10. It appears that in pursuance thereof series of conferences were carried on wherein the company and the unions of its workmen duly

participated. The Joint Labour Commissioner, the respondent No. 1, sent a report to the Government in November, 1976, when the chances of

settlement were bleak. It further appears that there was a strike by workmen which was settled by a tripartite agreement in writing dated February

10, 1977, which inter alia provided for bilateral discussions for settlement of the charter of demands except on matters therein settled. The

settlement further provided that the recommendations of the Expert Committee dated January 31, 1977, set up by the Government in the meantime

on June 10, 1976, on the computer would also be taken up for discussion by the parties. The company started operation of the computer on

March 1, 1977, on the basis of its unilateral decision which was objected to by the workmen leading to agitation and thereafter there was a

tripartite settlement in writing on March 31, 1977, on the charter of demands.

11. Mr. Ginwalla firstly contended that the initiation of the proceeding on April 24, 1976, was by P. C. Sen in his capacity as the Joint Labour

Commissioner as would be evident from the notice itself. So that the conferences held on basis thereof could not be said to be conciliation

proceedings at all, as the conciliation proceeding under the Industrial Disputes Act has a special legal character and status, creating legal rights in

favour of the workmen as also of the employer. The Junior Standing Counsel referred to the following notification of the Government of West

Bengal in the Labour Department:

GOVERNMENT OF WEST BENGAL

LABOUR DEPARTMENT.

Notification

No. 3542-IR

IR/12 L-5467

Calcutta, the 27th July, 1967

In exercise of the power conferred by Section 4 of the Industrial Disputes Act, 1947 (Act 14 of 1947), the Government is pleased hereby to

appoint the Joint Labour Commissioner, West Bengal, to be a Conciliation Officer for the purposes of the said Act for the whole of West Bengal.

By order of the Government

D. Chatterjee,

Jt. Secretary to the Govt. of W.B.

It thus appears therefrom that the Joint Labour Commissioner of the Government of West Bengal is also a conciliation officer under the Industrial

Disputes Act and acts as such in the matter of settlement of labour disputes in the industry as a conciliation officer. His description, however, is not

always accurate in that his capacity also as conciliation officer is not generally mentioned which (however) should be done as required in law. Even

so, as the parties have all through accepted and treated him as a conciliation officer in their industrial disputes there is no question of any prejudice

being caused to any parties. Even the company in its letter of December 21, 1976, made a representation to the Joint Labour Commissioner

(annexure " B " to the petition) contending that application u/s 33(2)(b) was not warranted regarding the dismissal of the concerned workmen,

though obviously the representation was intended for the Conciliation Officer. The petition of the company under Article 226 of the Constitution

wherein the connected Rule was issued as also the memorandum of appeal before us describes P.C. Sen only as the Joint Labour Commissioner

and not as the Conciliation Officer. The appellant-company can, therefore, have no grievance on this point.

12. Mr. Ginwalla next contended that the conferences held in the presence of the Labour Minister ceased to have the character of the conciliation

proceedings as the conciliation officer had or could have no control or superintendence over the discussions and negotiations between the

company and the workmen in the presence of the Minister. He referred to the decision in Nagercoil Electric Supply Corporation v. Industrial

Tribunal, Trivandrum (1952) 5 FJR 208 : AIR 1953 T.C. 167, in which the Court held that an agreement come to between the employer and the

workmen otherwise than in course of conciliation proceeding is not enforceable under the Industrial Disputes Act and cannot form the foundation

of grant of an interim relief by the Tribunal. On the facts of the case, the Court was of opinion that the settlement arrived at between the employer

and workmen in conference initiated by and in the presence of the Chief Minister could not be said to be one arrived at at a conciliation proceeding

under the Act as there was nothing to show that the Assistant Labour Commissioner was then functioning as the Conciliation Officer. Again, in The

Employees in the Caltex (India), Ltd., Madras and Another Vs. The Commissioner of Labour and Conciliation Officer, Government of Madras

and Another, , it was held that the Minister is not a conciliation officer and any settlement come to as a result of his good offices would not be a

settlement arrived at in course of conciliation proceedings. These decisions have been strongly relied on by the appellant in support of its case that

there was no conciliation proceedings as contemplated under the Act pending when the workman was dismissed from service.

13. As contended by the learned Junior Standing Counsel, it cannot be said and the decisions cited above do not also lay down the proposition

that mere presence of the Minister vitiates the conciliation proceeding. The presence of the Minister of the Government for settlement of industrial

disputes in conciliation proceeding between the employer and his workmen in public interest is only to be expected in fitness of things and it will be

an untenable situation in law or otherwise if the good offices of the Minister for settlement of industrial disputes, instead of helping the negotiations,

will nullify, impede or frustrate such settlement. As, however, the settlement before the conciliation officer has a binding force, the procedural

requirement must be strictly complied with. The conciliation officer accordingly, in such conferences, where the Minister is present to aid, advise

and help the negotiations, must not abrogate his functions and duties but take such active part as required under Sub-section (2) of Section 12 of

the Act, by way of investigation of dispute, examination of all matters involving right settlement of the dispute and doing all such things as he may

think fit for inducing the parties to come to a fair settlement thereof. In the discharge of such functions and duties by the Conciliation Officer, the

good offices of the Minister will be a substantial assistance but the ultimate control and superintendence in such proceedings as required u/s 12(2)

should always be with the Conciliation Officer, so that the mere presence of the Minister and his participation in the conciliation proceeding in aid

of settlement, by themselves, will not vitiate the conciliation contemplated under the Industrial Disputes Act, 1947.

14. It appears from record, P.C. Sen, the conciliation officer, has himself stated in his affidavit that meetings and conferences before the Labour

Minister formed part of his attempt to induce the parties to come to fair and amicable settlement of the dispute. The meetings before the Labour

Minister were conciliation proceedings held following the letter of the unions dated April 17, 1976, where the conciliation officer was mostly

present, and it cannot be contended, as it appears to us, that his absence in some meetings would alter the character of the conciliation

proceedings. It was denied that conciliation proceedings started in early February, 1977, when the workmen resorted to demonstrations The

conciliation officer further denied that there was no proper report dated November 8 1976, u/s 12(4) which, it has been said", was sent to the

Government on November 17, 1976. There is no denial by the company of these averments made by the conciliation officer himself.

15. It may be mentioned here that u/s 12(1) the conciliation officer has to hold conciliation proceeding whenever an industrial dispute exists or is

apprehended and such proceedings shall be deemed to be concluded, inter alia, when a report of the conciliation officer is received by the

Government u/s 12, Sub-sections (4). In this case conferences were held following notice of the respondent No. 1 dated April 24, 1976, and the

report of the conciliation officer u/s 12(4) was received by the Government on November 17, 1976. It further appears that Government on June

10, 1976, appointed an Expert Committee to make a report on the question of computer which submitted its report on January 31, 1977. On the

question of linkage of the question of computer with the charter of demands, there was agitation by the workmen culminating in settlement of

February 10, 1977, when certain claims were settled leaving discussions in future at bipartite level on the charter of demands and other disputes.

The company unilaterally started the computer on March 1, 1977, and objection of the Co-ordination Committee of the Unions, led to a tripartite

settlement on March 31, 1977 of the charter of demands to be operative till March 31, 1979, subject to extension by mutual consent upto March

31, 1980.

16. The facts noted above indicate that the conciliation on the charter of demands was pending either upto November 17, 1976, when the report

u/s 12(4) was received by the Government or upto February 10 and March 31, 1977, when settlement was arrived at the tripartite level. In any

event there is no escape from the position that the conciliation proceeding was pending on August 3, 1976, when the workman was dismissed from

service.

17. The conciliation officer fixed the case for further hearing on the basis of his finding that provisions of Section 33(2)(b) are attracted in the

instant case. It will be for the company now to justify the dismissal of the workman for misconduct on the principles fully set out in the decision in

Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, , either on the domestic enquiry or on additional evidence as may be adduced by it. Mr.

Ginwalla submitted that the conciliation officer, u/s 11(3), has no power of the Court under the CPC to enforce the attendance of any person or

examining him on oath which will seriously prejudice the company's case. The conciliation officer under Sub-sections (4) of Section 11 has the

same power to call for and compel production of documents. It is not possible for this Court to afford the company any further right to compel

attendances of witnesses in absence of statutory provision, and for the said reason, it is not possible to dispense with the statutory requirement of

Section 33(2)(b).

18. It was contended by Mr. Dutt on behalf of the workmen that the company having itself filed the application u/s 33(2)(b), it cannot be heard to

say that such application was unnecessary on ground that the conciliation proceeding was not pending at the material date. Mr. Ginwalla referred

to Article 213, volume 11, of Halsbury's Laws of England (third edition) which lays down that the fact that the party applying for prohibition has

himself initiated the proceedings in the inferior court is not material to the decision of the Court to grant or refused the order. In The Tata Iron and

Steel Co. Ltd. Vs. D.R. Singh, , the Court held that the employer could make an application under. Section 33 without prejudice to his plea that

Section 33 did not apply. In view of the above position, the company was entitled, while filing the application for approval u/s 33, to urge before

the Conciliation Officer in its application u/s 33(2)(b) that no conciliation proceeding was pending at the material date and in consequence Section

33(2)(b) was not attracted to the dismissal of the workman.

19. In the view we have taken, the appeal fails and is dismissed. There will be no order for costs in the circumstances. All interim orders are

vacated.

Mitra, C. J.

20. I agree.