Indian Explosives Ltd. Vs The 3rd Industrial Tribunal and Others

Court: Calcutta High Court

Date of Decision: Dec. 14, 1989

Acts Referred: Industrial Disputes Act, 1947 â€" Section 11A

Citation: (1990) 2 CALLT 421

Hon'ble Judges: Kalyanmoy Ganguli, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Kalyanmoy Ganguli, J.
In the instant application under Article 226 of the Constitution of India, an order of reference which is Annexure

"H" and an award dated May 9, 1985 which is Annexure "C" to the writ petition are under challenge.

2. No affidavit-in-opposition has been filed by any of the respondents in the case and the statements and allegations made in the writ petition go

unchallenged and uncontroverted and have to be accepted on their face value.

3. The matter was very hotly contested by the parties. Very long arguments were made by all the parties on a very long petition but the point in

issue seems to be a short one.

4. Benefit of verbiage the short case of the petitioner is that the respondent No. 4 was an employee of M/s. Alkali & Chemical Corporation Ltd.,

which was subsequently amalgamated with the petitioner.

5. For certain misconduct in the matter of entering wrong figures of paints and other materials despatched from the Rishra Works 6f the petitioner,

a charge-sheet was issued on or about April 14, 1982 against the respondent No. 4 under Clauses 17(c)(ii) and 27 of the certified standing orders

of the company. The respondent No. 4 was also suspended with effect from the said date. The respondent No. 4 gave a reply to the charge-sheet,

which, not being satisfactory, a disciplinary proceeding ensued. In the enquiry, opportunities of hearing were given to the respondent No. 4.

6. On or about August 24, 1982 the Enquiry Officer Mr. K.K. Nandi, Consultant, Industrial Relations, who was an outsider and not an employee,

submitted his report and findings in respect of the charge-sheet levelled against the said respondent No. 4, finding the respondent No. 4 guilty of

the charges levelled against him. The company, after carefully going through the record of the proceedings of the enquiry and finding of the Enquiry

Officer, concurred with the findings of the Enquiry Officer and dismissed the respondent No. 4 from the company''s service with immediate effect,

that is to say, the date of the letter of dismissal which was September 13, 1982.

7. The respondent No. 4 was aggrieved by such order of dismissal and initiated proceedings under the provisions of Industrial Disputes Act, 1947

which ultimately culminated in an industrial dispute referred to the 3rd Industrial Tribunal, West Bengal by the order of reference which is Annexure

''R'' to the petition. The award was passed on April 23, 1984 which is Annexure ''O'' to the petition. It is this award which inter alia, has been

challenged in the instant petition.

8. It is pertinent to note that the learned Tribunal by order No. 16/84-85, unhesitatingly held ""that the workman got adequate opportunities to

defend himself before the Enquiry Officer and that the enquiry that was held was fair and proper. The said order No. 16 has been annexed to the

writ petition marked with the letter ''N''.

9. Before we proceed further we may note in passing the import or impact of Section 11A of the Industrial Disputes Act, 1947 which, has

empowered the Tribunal to come to its own conclusion on the basis of the evidence already on record.

10. Before the engraftment of Section 11A into the body of the Industrial Disputes Act, 1947, tribunals were only entitled to see whether the

domestic proceeding was held properly and fairly. If the Tribunal found that the domestic enquiry was so held the Tribunal could not substitute its

own wisdom in the place and stead of the wisdom of the employer concerned. The amendment which was introduced by Section 11A changed the

position substantially. The amendment, for the first time, conferred on the Tribunal the power to set aside any order of discharge or dismissal

passed by the employer if it was satisfied that the order was not justified. The said amendment also conferred powers on the Tribunal to award

lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

11. In the instant case there was an observation by the learned Tribunal that certain ""weighment cards"" were not produced before the Enquiry

officer. The uncontroverted statements of the petitioner is that they prayed before the learned Tribunal to produce such ""weighment cards"" but the

Tribunal did not allow such prayer of the petitioner, inter alia, on the ground that as the enquiry was held fairly and properly, no further evidence

was needed to be adduced before it. At the same time the Tribunal comes to the conclusion that by not producing the said ""weighment cards"" the

company withheld the best evidence. The stand of the learned Tribunal seems to be contradictory. If the learned Tribunal was of the opinion that

best evidence was not produced, it could, for its own satisfaction, call upon the employer to produce such evidence before it. In the instant case in

fact, the petitioner itself made such a prayer before the learned Tribunal which was disallowed.

12. Both sides cited many cases on the various interpretations given to Section 11A by both the Hon''ble Supreme Court and the different High

Courts but it may not be necessary to refer to those cases in this case for reasons to be stated hereinafter.

13. The learned Tribunal although holding that the best evidence was not produced, did not allow such evidence to be produced. It may be

reiterated here that the learned Tribunal by the order No. 16 which is Annexure ''N'' to the petition found that the enquiry was properly and fairly

held. It is further to be noted that the Tribunal did not come to any conclusion that even for non-production of such best evidence, the guilt of the

petitioner was not proved. In order to set aside an order passed by the employer it is incumbent upon the learned Tribunal to come to a finding that

the conclusion of the enquiry officer was either perverse or was not based on the evidence on record or that the evidence on record was not

sufficient to warrant the finding of guilt. In vain I have tried to find any such finding of the learned Tribunal that because of non-production of best

evidence the employee concerned has suffered any prejudice or that there was no sufficient evidence before the enquiry officer to come to/the

conclusion of the guilt of the employee. The learned Tribunal merely states that on reappraisal of the evidence laid before the enquiry officer I find

that the conclusion reached by him cannot be accepted. The enquiry report is not a full proof document as the important considerations were not

considered with care and caution.

14. The learned Tribunal was eloquently silent as to whether on the basis of the evidence on record the guilt of the employee was at all established

or not. In the absence of such a finding the award of the Tribunal is not warranted even under the amended provision of Section 11A of the

Industrial Disputes Act.

15. For the reasons stated hereinbefore, I am constrained to hold that the finding of the learned Tribunal is not warranted by the reasons given by it

in the award impugned in the writ petition.

16. In the circumstances, this application succeeds. The rule is made absolute. Let a writ in the nature of mandamus issue commanding the

respondents to cancel and set aside the impugned award dated April 23, 1985 which is Annexure ''C'' to the petition.

There will however, be no order as to costs.

On the prayer of the learned Advocate appearing for the private respondent, there will be a stay of this order till 9.1.90.