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**(1999) 07 CAL CK 0035**

**Calcutta High Court**

**Case No:** Writ Petition No. 11059 (W) of 1999

In Re: Excel Frits and Colours Ltd.

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** July 6, 1999

**Acts Referred:**

- West Bengal Industrial Disputes Rules, 1958 - Rule 15, 20C

**Citation:** (2000) 86 FLR 735 : (2000) 1 LLJ 1364

**Hon'ble Judges:** Basudeva Panigrahi, J

**Bench:** Single Bench

**Advocate:** Partha Banja Chowdhury, A.K. Bose and Swarup Paul, for the Appellant; Ashish Kumar Das, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Basudeva Panigrahi, J.

An application has been filed under Article 226 of the Constitution of India by the company challenging the orders passed by the learned Judge, 4th Industrial Tribunal rejecting the prayer of the company to admit additional documents produced by the petitioner.

2. The company has claimed to have been engaged in manufacturing frits and components. The respondent No. 3 who is the main contesting party here was appointed as a Junior Officer of the company vide letter dated January 1, 1988 with effect from January 18, 1988. It has been further claimed that he was initially appointed on probation. But subsequently he was confirmed with effect from August 1, 1989 with an enhanced salary, increments and other emoluments.

3. The respondent No. 3 has, however, disputed the stand of the company and submitted that he has never worked in managerial and administrative capacity but

all through he had been working as a workman in the company. Since he was illegally and unlawfully terminated from service, he has challenged the order of termination by filing an industrial dispute. The petitioner- company by their application dated May 20, 1999 moved for admitting some additional documents as per list which was, however, resisted by the respondent No. 3 on the ground that those documents were available with the company but due to their sheer negligence and casual attitude they did not take any steps to produce their documents earlier. Therefore, those documents should not be admitted at this stage. The learned Tribunal Judge agreeing with the contention of the respondent No. 3 has, however, rejected the prayer of the company and, therefore, it has challenged the order of the learned Tribunal Judge in this writ petition.

4. The learned Advocate appearing for the petitioner has vehemently argued that the learned Tribunal Judge has illegally and unreasonably rejected the just prayer of the petitioner by shunting its opportunity to file the documents in Court. It has been further contended that those documents were not in possession and power of the petitioner at the time when the list of documents was filed before the Industrial Tribunal. No sooner those documents came into possession and power of the company, than filed an application to admit those documents in evidence. But unfortunately the learned Tribunal Judge without considering the relevancy and also the sufficient cause of late filing only on a technical ground rejected the petitioner's prayer. If those documents are not allowed to be admitted in evidence, it would work out great hardship and prejudice, to the petitioner.

5. The learned Advocate appearing for the respondent No. 3 has invited my attention that the learned Tribunal has, in the peculiar situation passed the order by rejecting the prayer of the petitioner inasmuch as those documents were well within the power and possession of the petitioner-company before filing the list of documents u/s 20-C of the West Bengal Industrial Disputes Rules.

6. Before considering the rival contentions of both parties I feel it necessary to quote Rule 15 of the West Bengal Industrial Disputes Rules, 1958.

"15. Evidence.- A Board, Court, Labour Court or Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit".

7. On a plain reading of the Rule it has appeared to me that the statute empowers a litigant to file evidence at any stage of the proceeding. But this Rule 15 shall be conjointly read with Rule 20-C of the West Bengal Industrial Disputes Rules, 1958 which is quoted hereunder:

"20-C. Inspection of documents.- (1) Within 14 days from the date of filing of the written statement by the second party, the parties shall file a list disclosing the documents which are in their possession and power relating to the matter or matters in dispute and upon which they want to rely, and each party shall give a

notice to the other of the date on which its list is filed.

(2) Within 10 days from the date of filing its list of documents, such party shall furnish to the other copies of the documents disclosed in the lists except the original registers, books of accounts and such other documents as may be exempted by the Industrial Tribunal or the Labour Court, as the case may be.

8. Great stress has been laid by the learned advocate appearing for the respondent No. 3 on a reported judgment in 1992 Labour and Industrial Cases 2597 in the case of Kerala State Electricity Board v. Sri K. Rajamoni where it has been held as follows at page 2599:

"If the petitioners are aggrieved against the final award, they have adequate remedy at that stage. If opportunity has not been given to the petitioners to give evidence or if the Tribunal proceeded in violation of the principles of natural justice, the award can be challenged at that stage. If the award is in favour of the petitioners, the petitioners cannot be aggrieved and, therefore, there is no ground for staying the further proceedings, in any case, at this stage in this Original Petition. A speedy disposal of the industrial dispute is the prime requisite and this Court will not be instrumental in stalling the proceedings and arresting final adjudication on merits, without prejudice to the petitioners" right to raise all the grounds raised in this petition if they are aggrieved at a later stage. I dismiss this petition."

9. It is true that if the present case is examined in the light of the principle decided in the above case, no chance should be given to the petitioner to produce documentary and oral evidence which had not been produced earlier. But since special rule has been framed by the State of West Bengal under the Industrial Disputes Act, the present case has to be decided in terms of the Rules framed under the Act.

10. Reference has been made to a judgment reported in [Shipping Corporation of India Ltd. Vs. Industrial Tribunal III and Others](#), in the case of Shipping Corporation of India Ltd, v. The learned Judge 3rd Industrial Tribunal, W.B. where it has been held as follows at p. 303:

12. "Consequently, in my view, it will be also within the discretion of the Tribunal to refuse to exercise such power even if it is found that document which is sought to be introduced at such stage or in possession of a party at the discovery stage and yet not disclosed or if there is no satisfactory explanation as to the failure of the concerned party to produce such document at the discovery stage. This exercise of power, in my view, is necessary by the Tribunal while exercising power u/s 20 for the simple reason that the very intention of the legislature in creating a forum under the Industrial Disputes Act for adjudication of industrial dispute was for the purpose of expeditious disposal of the matter. If such power is exercised casually or mechanically, the same certainly may become a weapon in the hands of the parties who are interested in delaying the proceedings.

Since it appears to this Court that in the instant case the Tribunal has rejected the prayer of the petitioner company only on the ground that such a power is not possessed by the Tribunal in view of the limitation of 14 days prescribed in Rule 20-C, for the reasons state above, the impugned order cannot be sustained and the same is hereby set aside. The matter is accordingly sent back to the Tribunal for fresh consideration of prayer of the petitioner company which should be done positively within two weeks from the communication of the order".

11. A learned single Judge of this Court Mr. SAMARESH BANERJEA, J. held that in case the documents which were in possession and power of a party has not been produced within 14 days from the date of filing of the written statement as required u/s 20-C, the party shall be precluded from filing the same documents at a later state. Therefore, the crucial question in this case that has to be decided is, whether the petitioner was in possession and power of the documents, sought to be adduced before the Tribunal, at the time of filing the written statement or not. In case, it is decided that those documents were available with the petitioner, then, the company shall not be permitted to file those documents at a later stage.

12. Of course, it is open to the petitioner to challenge the final award which shall be passed later, if it is so aggrieved, by taking this ground also. But if, the petitioner is permitted to adduce additional evidence at the moment, it would unnecessarily cause delay and the purpose of speedy disposal of the industrial dispute shall be frustrated. Therefore, the petitioner if so advised can challenge the final award, if it is likely to be affected by taking this ground also.

13. Therefore, the crucial question in this case to be decided is whether the petitioner was in possession and power of the documents sought to be adduced before the Tribunal at the time of filing the written statement or not. In case, it is decided that those documents were available with the petitioner, then, the company shall not be permitted to file those documents at a later stage. It has been stated in the application that some of the relevant documents have not been incorporated in the said list as all documents were not available at that time. Therefore, from the averments so stated in the application it does not, however, appear that the petitioner has stated that those documents which were sought to be filed as additional evidences were not in power and possession of the company at the time of filing of written statement. Moreover, from the averments it has also appeared that only due to inadvertence some of the documents had not been enclosed.

14. The learned Judge, Industrial Tribunal has also taken note of this fact and observed that the company has not stated that despite diligent search, those documents were not available at the time of filing of the written statement. It is true that ordinarily a party should not be precluded from producing the documents at a later stage. Merely, it does not always become a ground to reject the documents which are otherwise relevant. In this case, reliance was placed on the judgment reported in 1 1996 CLT 84: in Jyotilal Adhikari v. Smritikona Ghosh. But in the

aforementioned judgment, the provisions of Order 13, Rules 1 and 2 were taken into consideration. This Court in exercise of revisional jurisdiction had however directed in the circumstances of that case to admit additional evidences. But since the entire provision of the CPC is not applicable to industrial dispute, such analogy cannot be stretched to the instant case, as it has been held that the provisions of the West Bengal Industrial Disputes Rules, 1958 shall govern the proceeding pending before the Industrial Tribunal and the provision has circumscribed the power of the Tribunal. Therefore, it cannot traverse beyond such power.

15. Of course, the reasonings on which the application for additional evidences has been rejected, are not germane. But at the same time, the petitioner having not satisfied that he was in power and possession of the documents at the time of filing written statement, therefore, the petitioner cannot be permitted to file those documents at this stage.

16. Accordingly, I do not find any merit in the writ application and therefore, the same is dismissed.

17. If xerox certified copy is applied for urgently, the same shall be given to the learned advocates for the parties within two weeks from the date of application.