

(1985) 06 CAL CK 0022**Calcutta High Court****Case No:** None

Peerless Gen Finance and Invest.
Co. Ltd.

APPELLANT**Vs**

The Third Industrial Tribunal and
Others

RESPONDENT**Date of Decision:** June 7, 1985**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 11A

Citation: 90 CWN 714**Hon'ble Judges:** S.K. Mukherjee, J**Bench:** Single Bench**Advocate:** R.C. Deb, C.L. Ganguly, Sunit Dutta and D.N. Panda, for the Appellant; S.R. Ghosh, N.N. Gupta and Indrajit Sen, for the Respondent

Judgement

S.K. Mukherjee, J.

In this writ application the petitioner challenged order no. 74 dated 6th of November, 1984 passed by the Third Industrial Tribunal, West Bengal, in case no 8/326/78. The said reference arises out of an order of dismissal passed by the petitioner, against respondent no. 4, dated 27 of August, 1975. The reference was made by the Government Order dated 21.9.1973. That by an earlier order, being order no. 48, dated 3 1.3.1982, the Tribunal found that the enquiry in respect of the said respondent no. 4 was not fair and proper, set aside the order of 1 dismissal and the petitioner was directed to prove its case for the first time before the tribunal. Being dissatisfied with the said order of the Tribunal, the petitioner challenged the same by invoking the writ forum of this Court whereupon C.R. 5527(W) of 1982 was issued. Against the order, passed by R.C. Basak, J. on 25.4.84 in the said Civil Rule, which was challenged in appeal, the Court of Appeal on 28.6.1984 passed an order, inter alia, quashing the order of the respondent Tribunal as far as respondent no. 4 was concerned and remitted the case back to the Tribunal for a decision on the

validity of the domestic enquiry afresh as a preliminary issue by finding out whether the said enquiry was held in accordance with the principles of natural justice and the provisions of the standing order (service conditions) The Tribunal was further permitted by the Court of appeal to offer the employer an opportunity of adducing evidence in case the finding was against the employer. The impugned order has been passed by the Tribunal in pursuance of the liberty granted by the Court of Appeal. Mr. R.C. Deb, appearing in support of the Rule, has challenged the impugned order on the ground that the same is perverse and suffers from legal infirmity. In developing the said submissions Mr. Deb has tried to point out that the findings of the Tribunal about the violation of the principles of natural justice suffered from serious legal infirmities, rendering the same unsustainable in law. It is further contended by Mr. Deb that in purporting to decide the preliminary issue the tribunal has over-stepped its jurisdiction and has decided the entire case on merit, concerning the order of dismissal. Mr. Deb has submitted, in view of the findings arrived at by the Tribunal, it is desirable, for the sake of justice, that the matter should not be allowed to be decided by the same learned Judge but some other learned Judge, to avoid the effects of the impression already created in the mind of the learned judge.

2. Mr. N.N. Gooptu, learned Government pleader, opposing the writ application, on behalf of the workmen respondent no. 4, has emphatically challenged the propriety and correctness of the submissions of Mr. Deb. It has been argued by Mr. Gooptu that the findings of the Tribunal relating to the violation of the principles of natural justice are based on cogent and acceptable materials and there is no excess of jurisdiction committed by the tribunal in deciding upon the merits of the allegations against the petitioner by reference to the standing orders which, in this case, meant the terms and conditions including those arrived at by settlement, governing the service conditions of the workman concerned. In the context of the aforesaid facts, Mr. Gooptu has submitted that there is no merit in the writ application as the Tribunal has really noted in compliance with the directions given by the Court of Appeal of this Court. Mr. Gooptu has further submitted that the whole attempt of the employer is to drag the proceeding to the detriment of the workman concerned on the pretext of obtaining a proper decision on the preliminary point, a practice which has been deprecated by the highest judiciary of this country. Mr. Gooptu has contended that the serious perjury caused to the workman becomes at once apparent when it is considered that the so called report which is the basis of the allegation against the workman concerned, be it an oral report or a written report, is not forthcoming nor the maker of the report has been produced as a witness.

3. In support of their respective submissions the learned counsels have referred to a number of decisions.

4. Mr. Deb has relied on the decisions in the cases of *Tata Engineering & Locomotive Co. Ltd. v. S.C. Prasad & Anr.* reported in AIR 1969 (III) SCC 372 (paragraphs 19 to

20), Indian Iron & Steel Co. Ltd. v. Their Workmen, reported in AIR 1958 SC 79 and 130 (Paragraph 18), J.D. Jain Vs. Management of State Bank of India and another, , Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others, , Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and K.L. Tripathi Vs. State Bank of India and Others, . Mr. Gooptu on the other hand has relied on the principles laid down in the cases of D.P. Maherwari v. Delhi Administration reported in 1984 SC 153, Powari Tea Estate v. Boukati (N.K.) & Ors. reported in 1965 (II) L.L.J. 102, Sarada Pr. Misra v. State of U.P. reported in 1985 L.I.C. 39, Babulal Nagar & Ors. v. Sree Synthetics, reported in 1984 (II) All India S.L.J. 67 (Paras 10 and 13), The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , Madras Dist. Automobile Gen. Employees Association v. State of Madras & Anr. reported in AIR 1969 Madras 477, The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, .

5. In my view, there is considerable force in. the submissions of Mr. Deb and the impugned order is perverse and suffers from illegalities and infirmities rendering the same liable to be quashed and set aside. It is found that the Tribunal arrived at the findings of violation of principle of natural justice on a two fold basis, namely,

- a) The Enquiry report did not contain full reasons in support of the order of the Enquiry Officer and
- b) No copy of the report made against the workman concerned was supplied along with the charge sheet, nor the maker of such report examined.

6. As regards the firs ground it is not really intelligible as to what is meant by "full reasons". The inquiry Officer, from the report appears has summarised the evidence and has given his conclusions accepting the evidence adduced on behalf the employer. If reasons, though not in minute details exist in the report it cannot be said that the report is violative of the principles of natural justice.

7. As regards the second ground, gamely, non-supply of the copy of the report, it has to be borne in mind that the principle of natural justice cannot be put in a straight jacket, but has to be applied with necessary modification depending upon the facts and circumstances of each individual case and considering the prejudice that could be caused to a person affected by its violation. Regarding the incident, on which the allegations against the workman are based, witnesses were produced, who deposed to the factual state of affairs. The employer did not rely on any report nor did Li workman, in course of the enquiry, plead any prejudice for. non-supply of copy of any report. The witnesses produced were cross-examined without any suggestion to them Indicating in any way that non-supply of such alleged existing report affected the right of cross-examination of such witnesses by the workman concerned. The finding of the Tribunal on this point, therefore, suffers from perversity due to its failure to consider the above aspects.

8. As regards the other submission of Mr. Deb that the order suffers from serious legal infirmity, references may be made to the approach taken by the tribunal in placing the onus on the employer to prove its case against the workman to the hilt. It has been laid down more than once by the Supreme Court that a Tribunal is required to bind out only whether there is a *prima facie* case against the workman and not a proof of allegations to the hilt. Proof of the allegations beyond reasonable doubt is sufficient. The correctness of the last submission of Mr. Deb that the Tribunal over-stepped its limit by considering and deciding upon the merits of allegations against the workman before deciding the preliminary issue is confirmed by reference to the impugned order and the observations made by the Tribunal in the said order in finding that the workman concerned was not guilty of disobedience of lawful or reasonable order of any superior officer.

9. The cases, cited by Mr. Gooptu on behalf of the respondent workman, are, in the context of the aforesaid factual position, distinguishable.

10. In the premises I allow the application for writ and direct the Tribunal to proceed treating the preliminary enquiry and the reports submitted on conclusion thereof to be fair and proper in accordance with the law. It will be open to the Tribunal to consider the matter in the above manner, particularly, in exercise of its powers u/s 11A of the Industrial Disputes Act, I do not, however, find any reason to hold that the Tribunal would not consider the case on the lines of my observations above with an independent and free mind and as such I do not accept the submission of Mr. Deb that in the interest of justice the matter should be considered by some other learned Judge.

11. Let, therefore a writ of Certiorari issue quashing the impugned order. Let a writ of Mandamus also issue directing the Tribunal to proceed in accordance with the law on the lines of my observations above. In the facts and circumstances of the case there will be no order for costs.

As prayed for on behalf of the respondent No. 4 by Mr. Sen, there will be a stay of operation of my order for three weeks.