(1993) 09 CAL CK 0024

Calcutta High Court

Case No: Civil Order No. 11593 (W) of 1992

SK. Abdul Gofar		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: Sept. 17, 1993

Citation: (1994) 1 ILR (Cal) 250

Hon'ble Judges: Paritosh Kumar Mukherjee, J

Bench: Single Bench

Advocate: Partha Sarathi Sengupta and Anami Sikdar, for the Appellant;Aloke Banerjee, S.N. Pyne for Government, Bikash Ranjan Bhattacharya and Dilip Chatterjee for Private Respondent, for the Respondent

Final Decision: Allowed

Judgement

Aritosh K. Mukherjee, J.

This joint writ petition was initially moved on behalf of 230 Petitioners, inter alia, praying for issue of a writ in the nature of mandamus, upon the Respondents to absorb the writ Petitioners and to allow them to perform work at Haldia Dock Complex and permanently restraining the members of the other union from enjoying any right to work.

2. The Petitioners further prayed for issue of a writ in the nature of mandamus upon the Respondents to act according to law and according to the agreement dated September 2, 1978, (Annexure ''A'' to the writ petition), and to dispose of the Petitioners'' representations which have been also annexed to the writ petition, within a time to be fixed by this Hon''ble Court.

3. Although initially the writ petition was moved on behalf of 230 Petitioners, subsequently, an application for addition of party having been moved on behalf of 320 Applicants, the said application was allowed by my order dated May 13, 1993, and the interim order granted by Susanta Chatterji J. on September 24, 1992, in terms of prayer (e)(ii) of the writ petition was also extended to them. Prayer (e)(ii) of

the writ petition runs as follows:

By issuing an injunction restraining the Respondents and/or their officers, men and agents of the other union from appointing any worker/labour at the Haldia Dock in any way in contravention of the agreement dated 2.9.78 being Annexure ''A'' of this writ application.

4. Subsequently, however, the said interim order was modified on June 24, 1993, by directing that appointments might be made, but the same would be subject to the result of the writ petition and appointments already made in favour of the present Petitioners, would not be disturbed by giving fresh appointments in favour of third parties.

5. The case of the writ Petitioners, who are 550 in number, impleaded in the writ petition, is as follows:

The Petitioners are all casual workers of the Haldia Dock and they are the members of the National Union of Water Front Workers, Haldia Branch, and they were also the original workers of the Haldia Dock. On or about September 2,1978, a meeting was held in the chamber of Sri S. M. Banerjee, Additional Labour Commissioner, Government of West Bengal, in presence of Sri M. Gayen, Assistant. Labour Commissioner, Haldia, and also in presence of other representatives of the following concerned authorities:

(1) M/s. C.P.T. Haldia Dock Complex, Haldia.

(2) M/s. India Potash Limited.

(3) M/s. Lee Muir Head (I) Pvt. Ltd.

(4) M/s. Calcutta Port & Shore Mazdur Union.

(5) Haldia Shore Ships Transport Handling Workers Co-operative Construction Society Ltd.

An agreement was arrived at in the said meeting to the following effect:

(i) It has been agreed upon that work will commence'' from tomorrow i.e. 3.9.78 (1st shift) and the workers who worked previously in connection with unloading of cement ships (other than Port workers) will start work in the first phase.

(ii) List of workers in consultation with Shri Lakshman Seth, representing Calcutta Port and Shore Majdur Union and Sk. Abdul Gofur, representing this co-operative who will be deployed for work in subsequent stages will be drawn up.

(iii) Mode of payment to the workers will be decided later on consultation with the representatives of both the union and co-operative.

(iv) This removes the deadlock that stands on the way of unloading of Fertiliser vessel berths at Haldia Port.

(v) There will be no stoppage of work during the process of unloading of the ship. In case of any dispute and/or difference the matter will be brought to the notice of Asstt. Labour Commissioner, Haldia, for peaceful settlement.

6. It is further the case of the writ Petitioners that on the basis of the aforesaid agreement dated September 2, 1978 which was entered into by Sk. Abdul Gofur of I.N.T.U.C. and Lakshman Seth of C.I.T.U., the present Petitioners and other members of I.N.T.U.C, that 550 workmen were working in two shifts for about two months before coming of M.V. "AIRON" to Haldia Dock. The said agreement also provided that the workers who had worked previously in connection with unloading of cement ships (other than port workers) would start work in the first phase, but when the aforesaid 550 workmen went to work in that ship, they were seriously obstructed by the Calcutta Port and Shore Majdoor Union in Calcutta Port Trust protected Area (General Cargo Berth) and seriously assaulted by that Union, i.e. C.I.T.U. As a result, they had been till now deprived of their right to work. As such, the concerned authorities had violated the afore-mentioned agreement dated September 2, 1978.

7. Thereafter, Sk. Abdul Gofur, Petitioner No. 1, being the Secretary of Haldia Shore Ships Transport Handling Worker Co-operative Society Ltd. submitted a representation on September 5, 1978, to the General Manager, Calcutta Port Trust, Haldia Dock Complex, which runs as follows:

I like to inform you that on 3.9.78 when our workers entered into your protected area with proper gate passes to work some traffic Majdoors bodily assaulted our workers. I cannot understand how such an incident occurred when you have got your security men and the area is protected. The old workers went to work as per tripartite agreement dated 2.9.1978, but they could not do the work and our workers are not able to work even now as they were refused to obtain gate passes.

Now, I cannot understand how the work will be continued, when the sanctity of an agreement is not given.

Will you kindly lock into the matter and take proper action and please bring a smooth atmosphere on the works, so that our old workers can work properly and peacefully,

A copy of the said representation, which is Annex. ''C to the writ petition, was forwarded to the Assistant Labour Commissioner, Haldia, Sub-divisional officer, Haldia, Officer-in-Charge, Haldia P.S., Mr. Sushil Dhara, the then Member of Parliament and M.L.A., Sutahata.

8. Thereafter, the Petitioner No. i informed the Assistant Labour Commissioner, Haldia, regarding the violation of the agreement dated September 2, 1978, regarding physical assault of the Petitioners in the hands of the members of the rival union.

9. In the agreement dated September 2, 1978, it was stipulated'' that 550 cargo Mazdoors would work in M.V. Arion ship at Haldia Dock in the first phase and also in the first shift. But, when 550 cargo mazdoors went to work in that ship, at that time they were seriously obstructed by the members of the Calcutta Port and Shore Mazdur Union in C.P.T. protected area (General Cargo berth) and they were seriously assaulted by the said union (C.I.T.U.). As a result, they have been deprived from their right to work still now.

10. Thereafter, a meeting was held on June 4, 1982, in the chamber of the Secretary, Labour Department, Writers'' Buildings, in presence of the following persons:

(1) Sri T. C. Dutta, Chairman, Calcutta Port Trust.

(2) Sri M. K. Kar Gupta, Deputy Chairman, Calcutta Port Trust, Haldia Dock Complex.

(3) Sri S. Chakraborty, Assistant Manager, Administration, Calcutta Port Trust, Haldia Dock Complex.

(4) Sri Lakshman Seth, representative of Calcutta Port & Shore Mazdur Union.

(5) Hemlal Chatterjee, representative of Calcutta Port & Shore Mazdur Union.

(6) Sri K. K. Roy Ganguly, representative of Calcutta Port and Shore Mazdur Union.

(7) Sri S. K. Bhattacharjee, Special Secretary, Labour Department, Labour Commissioner, West Bengal.

After the discussion, amongst the aforesaid persons, a conclusion was arrived at which runs as follows:

(i) The existing cargo handling workmen as well as 96 workmen who have been recently recruited by the Port Trust Authority from amongst the Employment Exchange candidates and ordered to work as casual cargo handling workmen will provisionally work on the ships and no job on the shore which are done by the existing group of 750 workmen who are presently engaged by the different clearing and shipping agents in the job of cargo handling at Haldia Dock Complex will be offered to any port worker. The above arrangements are provisionally made without prejudice to the rights and contention of the union (i.e. Calcutta Port and Shore Mazdur Union) in regard to mode of employment/ deploy of 96 workmen and will continue for a period of next 3 months within which all endeavours will be made by the State Government by the parties concerned to adopt a suitable scheme for guaranteeing employment to their 750 workmen in consultation with the Ministry of Transport & Shipping, Government of India.

(ii) There will not be any further direct recruitment of worker for the job of cargo handling at Haldia Dock Complex till the scheme as referred to in Clause (i) above is finalised.

(iii) The Union will advise the workmen concerned to restore normal working immediately.

(iv) The question of imposing wage cut for the period from 30.5.1982 to 4.6.1982 will b,e discussed and finalised along with the issue as mentioned in Clause (i) above.

The aforesaid minutes dated June 4, 1982, was signed by Sri S. Bhattacharjee, M. K. Kar and other 4 persons, Xerox copy of which has been annexed to the writ petition as Annex. ''F''.

11. Thereafter, on December 22, 1982, Sk. Abdul Gofur, as Vice-President, National Union of Water Front Workers, Haldia Branch, submitted a representation to the Hon''ble Minister, Shipping and Transport, Government of India, New Delhi* regarding the afore-mentioned disputes between the workers of the two unions. The said representation of Sk. Abdul Gofur was, inter alia, to the effect that the C.I.T.U. union has decided new scheme for registration of cargo handling workmen under the banner of C.I.T.U. by depriving 550 cargo handling mazdurs, including the present Petitioners who worked earlier under clearing and shipping agent, Haldia.

12. Thus, he highlighted the fact that a new name such as Cargo Handling workmen, was being sought to be developed by C.I.T.U.. The C.I.T.U. union was trying to make registration of the afore-mentioned newly Cargo Handling Workmen by resorting to the minutes of the aforesaid meeting held on June 4, 1982, which was held between Calcutta Port Trust management and Calcutta Shore Mazdur Union (C.I.T.U.).

13. The Petitioner No. 1 in the said representation requested to stop the registration of the newly formed union at Haldia Dock, xerox copy of the said representation has been annexed as Annex. ''G'' to this petition.

14. On June 10, 1983, Sri Lal Bahadur Singh, as the General Secretary of West Bengal Pradesh National Trade Union Congress, on behalf of the Petitioners, including the other connected members of National Union of Water Front Workers. Haldia Branch, submitted representation to the Shipping Minister, Government of India, New Delhi, regarding the afore-mentioned disputes and requested him for taking appropriate steps to stop the mala fide activities of the concerned officers of the Department.

15. Before moving this Court for issuance of writ of appropriate nature, as aforesaid, the Petitioners made several other representations before the concerned authorities, which have been stated in paras. 16 to 26 of the present writ petition.

16. In support of their case, the writ Petitioners have submitted that the Assistant Labour Commissioner, being Respondent No. 10, and the Additional Labour Commissioner being Respondent No. 11, and other concerned Respondents had violated the terms of the agreement dated September 2, 1978, though they are duty-bound to act in accordance with the said agreement.

17. It was also submitted that the Union of India, through the Secretary, Ministry of Shipping and Transport, being the Respondent No. 2 and the Special Secretary, Labour Department, Labour Commissioner, Government of West Bengal, being the Respondent No. 8, also acted arbitrarily by entering into another agreement/minutes dated June 4, 1982, excluding the representatives of the Petitioners and, as such, the said action is highly arbitrary and unjust.

18. Mr. Partha Sarathi Sengupta, learned Advocate with Mr. Anami Sikdar, learned Advocate, appearing for the writ Petitioners who are 550 in number and members of National Union of Water Front Workers, Haldia Shore Ships Transport Handling Workers Co-operative Construction Society Ltd., sponsored by Haldia Dock Workers, are entitled to work on the basis of the agreement dated September 2, 1978, and their service cannot be terminated by mere physical assault by the members of the rival trade union.

19. In this connection, Mr. Sengupta has drawn the attention of this Court to para. 10 of the writ petition wherein the writ Petitioners stated as follows:

That the Petitioners clearly stated in their representations which were already made before the concerned authorities that in agreement between Sk. Abdul Gofur of I.N.T.U.C. and Lakshman Seth of Calcutta Port and Shore Mazdur Union (C.I.T.U.) was made on 2nd September, 1978. The 550 workmen had been working in two ships for about two months before coming of M.V. Arion to Haldia Dock. In that agreement it was stipulated that 550 cargo mazdurs would work in M.V. Arion ship at Haldia Dock in the first phase and also in the first shift. But when 550 cargo mazdurs went to work in that ship, at that time they were seriously obstructed by the members of the Calcutta Port and Shore Mazdur Union in C.P.T. protected area (general cargo berth) and they were seriously assaulted by the said Union (C.I.T.U.). As a result, they have been deprived from their right to work still now.

20. Mr. Sengupta further referred to the statements made in para. 13 of the affidavit-in-opposition dated November 17, 1992, affirmed by Sri Dilip Kumar Roy on behalf of the Calcutta Port Trust, wherein the deponent referring to the statements made in paras. 9 and 10 of the writ petition, had merely referred to the records and thereby virtually admitted the allegations.

21. On the basis of the aforesaid state of affairs, Mr. Sengupta submitted that the writ Petitioners who are 550 in number were working as casual labour in Haldia Dock Complex.

22. He further submitted that in violation of the tripartite agreement dated September 2, 1978, which is Annex. ''A'' to the writ petition, the authority concerned entered into an agreement on June 4, 1982, which is Annex. ''F'' to the writ petition with the leader of the rival union and thereby hampered the employment rights of the Petitioners. Since then the Petitioners through their union leader Sk. Abdul Gofur, who is Petitioner No. 1, wanted to ventilate their grievance for getting

effective jobs, but no justice has been done to them, by redressing their grievance.

23. Mr. Sengupta further referred to the statements made in para 8. 5(n), (o) & (p) of the said affidavit-in-opposition which run as follows:

(n):In course of discussion with the Management of Haldia Dock Complex and the Pool Management a settlement was arrived at on 8th June, 1990. It was agreed between the parties that the Pool Management will furnish the list of their enlisted workers and the Port Authorities will fill up 152 vacant posts from amongst the list subject to suitability and subject to obtaining necessary permission from the State Government for dispensing with the formalities relating to the notification to the local employment exchange.

(o):The Cargo Pool Management submitted a list of their workmen, clerks, supervisors to the Port Authorities. The Port Authorities after receipt of the said list had taken steps to fill up the existing vacancy from amongst the list so submitted by the Cargo Pool Management subject to suitability and subject to dispensing with the formalities after receipt of the said list had taken steps to fill up the existing vacancy from amongst the list so submitted by the Cargo Pool Management subject to suitability and subject to dispensing with the formalities of notifying the local employment exchange by the State Government.

(p):I state that Dhananjoy Jana and others earlier moved a writ petition before the Hon''ble Court being CO. No.. 2672(W) of 1988, inter alia, praying for the following reliefs:

(a) A writ in the nature of mandamus commanding the Respondents Nos. 1 to 5 and each one of them particularly the Respondent'' No. 3 to consider for framing the scheme as provided under the provisions of Dock Workers (Regulation of Employment) Act, 1948, for registering the names of the Petitioners as workers by issuing necessary Registration Number and identity cards by the Calcutta Port Trust authorities taking into consideration the framing of such scheme in Calcutta Port Trust, Paradeep Port and other major port of India.

24. Mr. Alok Banerjee, with Mr. S. N. Pyne, learned Advocate appearing for the Calcutta Port Trust, has virtually admitted the facts stated in the writ petition relating to entering into the agreement dated September 2, 1978.

25. Mr. Banerjee, practically admitted the obstruction made by the members of the rival union led by Lakshman Seth.

26. Mr. Banerjee submitted that the. objective of Haldia Dock Complex was to evolve a single agency not only for cargo handling operation on boat but also for all jobs on shore, but the same did not materialise and private cargo handling workmen, who came into existence which cater to the Steamer Agent, Handling Agent and Clearing Agent need of labour for their own shore jobs.

27. Mr. Banerjee submitted that in the instant writ petition the writ Petitioners have prayed for enforcement of the agreement dated September 2, 1978, being Annex. ''A'' to the writ petition. It would be evident from the said agreement that there was a dispute between the Calcutta Port and Shore Mazdoor Union and Haldia Shore Ship and Transport Handling Workers Co-operative and the said disputes were settled and recorded in the Minutes of the meeting held on September 2, 1978. The work of the Port authorities were seriously hampered due to the inter-union rivalry and, as such, the representatives of the Port Authorities were present in the meeting held on September 2, 1978, to know the outcome of the meeting.

28. In conclusion, Mr. Banerjee submitted that the Petitioners or its members neither engaged by the Port Authorities nor engaged by any contractor employed by the parties. There is no relation of employer and employee between the Port authorities and the writ Petitioners nor the Port authorities is the principle employer and directly paid the writ Petitioners through any contractor and, as such, the writ petition is not maintainable.

29. Mr. Bikash Ranjan Bhattacharya, with Mr. Dilip Chatterjee, learned Advocates, appearing for the Respondent No. 21 submitted that the writ petition is not maintainable, particularly the prayer cannot be granted by this Court. According to him, the writ Petitioners have sought for implementation of the agreement dated September 2, 1978, though there has been a subsequent agreement dated June 8, 1990, regarding the absorption of cargo handling workers. As a matter of fact, on the strength of the said agreement, the Port authorities have already absorbed 185 handling workers. The said agreement dated June 8, 1990, has, therefore, been acted upon and the workers have got the benefit of the same.

30. Considering the rival submissions of all the parties this Court is of the view that the writ Petitioners, who are 550 in number, are entitled to be absorbed gradually and are entitled to get benefit of the agreement dated September 2, 1978, in view of the admission made by the Calcutta Port Trust and Haldia Dock Complex authorities.

31. I am further of the view that on the face of the agreement dated September 2, 1978, the writ Petitioners cannot be obstructed by the members of the rival union on September 3, 1978, as it was done in the facts of the present case and it is obligatory on the part of the Calcutta Port Trust and Haldia Dock Complex authorities to ensure their employment and to allow them to work normally.

32. Accordingly, I direct the Respondents to frame a suitable scheme under the Dock Workers (Regulation of Employment) Act, 1948, within 3 months from communication of the order and to secure permanent employment to the writ Petitioners in the posts of Mazdoor and Supervisor respectively on priority basis.

33. It is made clear that till such preparation of scheme and permanent recruitment of the Petitioners who are 550 in number are made, no other appointment in the said posts be made and the Respondents are restrained from registering any name

of casual workers or giving any appointment prior to giving appointment to the Petitioners.

34. The present writ petition is allowed to the extent indicated above.

35. There will be no order as to costs.

36. Let plain copy of the operative part of this judgment, countersigned by the Assistant Registrar (Court), be given to the learned Advocates for the parties, on usual undertaking.