(2014) 11 CAL CK 0086

Calcutta High Court

Case No: Writ Petition No. 28383 (W) of 2014

Maino Mejhian	APPELLANT
Vs	
Eastern Coalfields Limited	RESPONDENT

Date of Decision: Nov. 25, 2014

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 15, 16, 21
- Contract Act, 1872 - Section 26
- Industrial Disputes Act, 1947 - Section 10, 12(3), 18, 18(3)(d), 2(p)

Citation: (2015) 1 CALLT 160 : (2015) 144 FLR 284 : (2016) LabIC 177

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Nilanjan Bhattacharjee and Debarati Bhattacharya, Advocate for the Appellant; R.N. Majumder and Amit Halder, Advocate for the Respondent

Judgement

Harish Tandon, J.

The petitioner''s application seeking an appointment on compassionate ground stood rejected simply on the premise that the National Coal Wage Agreement - VI. does not include the married daughter.

2. To address the points canvassed by the respective advocates, it would be apt to narrate the facts involved in this case.

3. Admittedly the mother of the petitioner was an employee of Eastern Coalfields Limited and was working as ''Shale Picker'' at the Parasea OCP Kunustoria Area, Burdwan. She died on 9th February, 2014 while in service. The petitioner appears to be the only daughter of the deceased employee and claims to be totally dependent upon her income.

4. It is not in dispute that the petitioner is a married daughter, but claims to have been dependant upon the income of her mother. An application seeking

appointment on compassionate ground was taken out enclosing all the relevant documents required for consideration thereof in the month of February, 2014.

5. The Eastern Coalfields Limited communicated the petitioner by letter dated 24th April, 2014 that her application seeking appointment on compassionate ground cannot be proceeded with, as the married daughter is not included in Clause 9.3.4 of National Coal Wage Agreement - VI.

6. The learned advocate for the petitioner submits that there cannot be a discrimination between an ''unmarried daughter'' and a ''married daughter'', which offends Articles 14 and 21 of the Constitution of India. He further submits that any clause or term incorporated in the National Coal Wage Agreement - VI, which offends the Constitutional mandate, is required to be struck down and the married daughter shall be deemed to have been included within the Clause for the purpose of appointment on compassionate ground.

7. To buttress the aforesaid submission, the reliance is firstly placed upon a Co-ordinate Bench decision of this Court in case of Smt. Usha Singh v. State of West Bengal & Ors. reported in 2003 (1) C.L.J. 407. The reliance is further placed upon an unreported judgment delivered by a Division Bench of this Court in M.A.T. 1298 of 2009 decided on 25th February, 2010 on the proposition that the Writ Court is competent to interfere with the National Coal Wage Agreement - VI, if any of the terms or Clauses therein violates Articles 14 and 16 of the Constitution.

8. By saying that the married daughter cannot be excluded from the zone of consideration in relation to an appointment on compassionate ground, when the unmarried daughter or the divorcee daughter is eligible for being considered offends Article 15 of the Constitution, reliance is placed upon an unreported judgment delivered by a Division Bench of the Bombay High Court in case of Smt. Ranjana Murlidhar Anerao v. The State of Maharashtra & Ors. (W.P. No. 5592 of 2009 decided on 13th August, 2014).

9. Mr. Majumder, learned advocate appearing for the Eastern Coalfields Limited, strongly submits that the Court should not interfere with the settlement as defined under Section 2(p) of the Industrial Disputes Act, 1947, as any dispute arising or flowing therefrom, is an industrial dispute capable to be determined by the Industrial court. To support the aforesaid contention, Mr. Majumder relies upon a Division Bench judgment of the Patna High Court in case of Jyotish and Others Vs. Union of India (UOI) and Others .

10. He further submits that if the settlement has been arrived between the management and the vast majority of the workmen with their eyes open, such settlement cannot fail on the plea that it is not fair and just and places reliance upon a judgment of the Supreme Court in case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, .

11. By referring another judgment of the Supreme Court rendered in case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, , Mr. Majumder submits that the settlement, as defined under the Industrial Disputes Act, arrived on active assistance of the Conciliation Officer, binds both the management and the workers; even if an Union formed by the minority workers do not agree with the said settlement, the settlement is to be respected and binds all the members of the workers'' Union in terms of Section 18(3)(d) of the Industrial Disputes Act, 1947. He further submits that the Apex Court in the said Report have further held that if the dispute is relatable to industry, the Writ Court should seldom interfere and should relegate the parties to ventilate their grievance before the Industrial Court or the Tribunal.

12. Mr. Majumder vehemently submits that the settlement is exempted from being interfered by the Court. It is the resultant and conscious decision of the management and the workers'' Union and the Court cannot impose certain terms or clauses within the said settlement, as the Court is not supposed to re-write the settlement. When the Clauses incorporated in the said settlement do not recognize the married daughter for the purpose of appointment on compassionate ground, the authorities have rightly rejected the application on such score.

13. Having considered the submissions, the point, which hinges from the submissions advanced by the respective counsels, is whether the married daughter is eligible to be considered for appointment on compassionate ground, even if the Clause do not include the married daughter, as it offends Articles 14, 15, 16 and 21 of the Constitution.

14. Before proceeding to deal with the point as recorded above, it would be convenient and relevant to quote certain Clauses from the National Coal Wage Agreement - VI, which runs as follows:

"9.3.1. Employment would be provided to one dependant of workers, who are disabled permanently and also those who die while service. The provision will be implemented as follows:-

9.3.2. Employment to one dependant of the worker who dies while in service. In so far as female dependants are concerned, their employment, payment of monetary compensation would be governed by para 9.5.0.

9.3.3. The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

9.3.4. The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age

limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment."

15. From the aforesaid provisions, it appears that apart from the dependant''s spouse, unmarried daughter, son and legally adopted son are entitled to appointment, if the employee dies in harness. In the event, those dependants are not available, by means of an extended provision brother, widowed daughter, widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earning of the deceased may be considered for such appointment. Admittedly the married daughter is not included in the said Clauses, as only unmarried daughter and the widowed daughter found place in the aforesaid Clauses; even Clause 9.3.3, includes son-in-law as member of the family of the deceased, provided he is depended upon the earning of the deceased employee.

16. The plain and simple reading of the said Clauses gives an impression that the married daughter is not entitled to be considered for appointment on compassionate ground, if the father or mother, as the case may be, dies while in service. If the Court proceeds simply on the basis of the text and the contextual interpretation of the aforesaid Clauses, there is no difficulty in arriving at the conclusion that if any exclusion is made, the person coming within the ambit of such exclusion cannot claim any benefit under the said agreement. It would be a different when such exclusion offends any of the Constitutional mandate or violates the law of the country or is opposed to public policy.

17. Although the unmarried and widowed daughter are included within the said Clauses even the son-in-law is also included, but the married daughter does not find place in the said Clauses, which led the respondent authorities to say that the married daughters are not entitled for appointment on compassionate ground.

18. In somewhat similar circumstances, the matter came up before this Court in case of Smt. Usha Singh (supra), where the statutory rules governing the appointment on compassionate ground in relation to the primary teacher was involved. Rule 14 of the said Rules provides appointment on compassionate ground to wife, unemployed son and the unemployed unmarried daughter, but does not include the married daughter to be eligible for such appointment.

19. The Co-ordinate Bench noticed the judgment of the Supreme Court in case of Savita Samvedi (Ms) and Another Vs. Union of India (UOI) and Others, , wherein it is held - "A son is a son until he gets a wife. A daughter is a daughter throughout her life". The Co-ordinate Bench further took notice of Section 26 of the Indian Contract Act, which forbidden any agreement in restraint of the marriage of any person other than the minor. Taking aid of Convention of Elimination of all forms of Discrimination Against Women (in short "CEDAW") the Co-ordinate Bench held that Rule 14 thereof, restricting the eligibility for appointment only to an unmarried

daughter, offends Articles 14 and 21 of the Constitution of India and directed that the married daughter is equally competent to be considered for appointment on compassionate ground, provided the other conditions viz. financial crisis, educational qualification, etc. are fulfilled.

20. The Division Bench of this Court in M.A.T. 1298 of 2009 was dealing a matter pertaining to Clause 9.5.0. of the National Coal Wage Agreement - VI, which provides - if the female dependant below the age of 45 years is entitled either for a monetary compensation of Rs. 2,000/- per month or an employment. The said Clause further provides that in case of death either in mine accident or for other reasons or medical unfitness, the male dependant of the concerned worker, if he is below the age of 15 years, would be kept in a live roster and be provided employment in commensurate with his skill and qualifications when he attains the age of 18 years. A point arose as to whether the female dependant, who is below the age of 18 years, should be kept in the live roster and to be considered for appointment upon attaining the age of 18 years. The Division Bench further held that the discrimination offends Articles 14 and 16 of the Constitution as well as the provisions of Protection of Human Rights Act, 1993 and the CEDAW and directed the female dependant to be included in the live roster. The Division Bench relied upon a judgment of this Court rendered in case of Smt. Kisto Dasi & Anr. v. Coal India Limited & Ors. reported in 2006 (2) CLJ 15 (Cal) wherein the Court noticed various provisions of the Protection of Human Rights Act, 1993 and the CEDAW and held that the ward "dependant" should not be given restrictive meaning, so as to exclude the married daughter as both the male and female child are to be treated as dependant subject to their economic conditions irrespective of their marital status.

21. In a most recent judgment (Smt. Ranjana Murlidhar Anerao v. The State of Maharashtra & Ors. decided on 13th August, 2014), the Division Bench of the Bombay High Court also faced with the similar situations and held that any discrimination between the unmarried daughter and married daughter offends Article 14 of the Constitution.

22. The law laid down in the above noted decisions, there is no hesitation to hold that any discrimination between the same class or between the gender offends Articles 14, 15 and 16 of the Constitution of India. There are various conceivable facts, which the Court can perceive when the married daughter, who is not looked after by her husband, is living with the deceased employee and is fully depended upon deceased''s income.

23. Section 26 of the Indian Contract Act postulates that if any agreement in restraint of the marriage is void, the daughter, who was given in marriage and even thereafter is fully depended upon the deceased employee, cannot be treated as a separate class so as to keep outside the purview of the said Clause. There may be a case, where an unmarried daughter after getting an employment marries a person and started living with him and such change of status shall not stand in the way of

continuing with the employment on compassionate ground. Though the compassionate appointment is opposed to Articles 14 and 16 of the Constitution, but the same is recognised with a sole intention to sustain the bereaved family who was the only bread earner. The family should not be kept in penury for all time to come and, therefore, the financial capacity or the income of the family are the factors to be considered for compassionate appointment. Furthermore, it is apposite to record that the son in law is included within the said Clause with an avowed object to provide sustenance to the family of the deceased employee. It is unconceivable and unthinkable that the married daughter shall be excluded from the purview of the said Clause, as the daughter shall remain the daughter throughout her life as held by the Apex Court in case of Savita (supra).

24. There is another point raised by Mr. Majumder, which needs to be dealt with. According to Mr. Majumder, the settlement arrived between the workers'' Union and the management within the meaning of Section 2(p) of the Industrial Disputes Act is not amenable to be challenged before the Writ Court. The inspiration of such argument appears to have been drawn from the Division Bench judgment of Patna High Court in case of Jyotish (supra), wherein it is held that the writ petition under Article 226 of the Constitution does not lie for enforcement of right under the settlement in the following words:

"9. It is true that the National Coal Wage Agreement is a settlement within the meaning of Section 2(p) of the said Act. However, as the respondent-Company is a ''State'' within the meaning of Article 12 of the Constitution of India for enforcement of right under a settlement. Such a right can be enforced only by raising an industrial dispute. It is now well-known that this Writ court cannot convert itself as Industrial Court for the purpose of determining industrial dispute."

25. In the said case a Mandamus was sought commanding the respondent authorities i.e. the Coal India Limited to declare the petitioner therein as permanently disabled as per the report of the Medical Board and then to enforce Clause 9.4.3. of the National Coal Wage Agreement - VI. The petitioner of the said case was found medically unfit by the Medical Board, but the authorities did not accept the said report and constituted another Medical Board. Instead of appearing before the newly constituted Medical Board, the petitioner therein seeks for Mandamus as recorded above.

26. In the backdrop of the above fact and more particularly when the Mandamus was sought to implement Clause 9.4.3. of the National Coal Wage Agreement - VI, the Division Bench held that the dispute is capable of being raised before the Industrial Court as it comes within the definition of ''Industrial Dispute'' and the Writ Court should not convert itself into the Industrial Court for the purpose of determination. However, in paragraph No. 11, the Division Bench held that unless a case of arbitrariness and a violation of Article 14 of the Constitution is made out, the Writ Court should not usurp the power of the Industrial Court. It would be relevant

to quote paragraph 11 of the said judgment, which runs as:

"11. Unless and until the management''s action is held to be arbitrary and thus violative of Article 14 of the Constitution of India, this Court cannot issue any writ in favour of the petitioners in exercise of its jurisdiction under Article 226 of the Constitution of India. I do not see any plausible reason as to why the petitioners are afraid of submitting themselves to the jurisdiction of newly constituted Medical Board, if they really have become permanently disabled."

27. In case of Tata Engineering and Locomotive Co. Ltd. (supra), an award passed by the Industrial Tribunal was the subject matter of challenge before the Supreme Court in a Special Leave Petition. The industrial dispute raised therein relates to the increase of the additional daily wage as agreed in the settlement by the Union of minority workers on the ground that the same is unfair and unjust. In the above perspective it is held that if the settlement has been arrived at by a vast majority of the concerned workers with their eyes open, it must be presumed that it is just and fair. Paragraphs 6 and 7 of the said report is reproduced as under:

"6. The conclusion reached by the Tribunal that the settlement was not just and fair is again unsustainable. As earlier pointed out, the Tribunal itself found that there was nothing wrong with the settlement in most of its aspects and all that was necessary was to marginally increase the additional daily wage. We are clearly of the opinion that the approach adopted by the Tribunal in dealing with the matter was erroneous. If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71, i.e., 11.18 per cent) were not parties to it or refused to accept it, or that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. In this connection we cannot do better than quote extensively from Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, , wherein Goswami, J., speaking for the Court observed (at p. 327 of AIR):

''Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer, in the interest of general peace and well being there is always give and take. Having regard to the nature of the dispute, which was raised as far back as 1968, the very fact of the existence of a

litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour gas gained in the matter of wages and if there is some reduction in the matter of dearness allowances so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.''

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''We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all unnecessary expenses in uncertain litigation. The settlement, therefore, cannot be judged on the touch-stone of the principles which are laid down by this Court for adjudication.

There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.''

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''It is not possible to scan the settlement in its bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has

accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement.

The principles thus enunciated fully govern the facts of the case in hand, and, respectfully following them, we hold that the settlement dated the 7th Feb., 1970 as a whole was just and fair."

7. There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a worker would not make him a party to the settlement for the purpose of S. 18 of the Act (vide The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, . It is further unquestionable that a minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement with the employer (vide Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, . But then here the company is not raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already arrived at or a plea that the reference is not maintainable because the Telco Union represents only a minority of workers. On the other hand the only two contentions raised by the company are:

(i) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it, and

(ii) that the reference is liable to be answered in accordance with the settlement because the same is just and fair.

And both these are contentions which we find fully acceptable for reasons already stated."

28. In case of National Engineering Industries Ltd. (supra) the reference under Section 10 of the Industrial Disputes Act by the Appropriate Government was challenged by filing the writ petition before the Rajasthan High Court. In course of the proceeding an argument was advanced over the settlement arrived between the management and the workers'' union by some of the members of the union in minority. The Apex Court held that the settlement of dispute between the parties thereto should be respected, as it brings more lasting peace than the award to be passed. Once the settlement is arrived with free will of the parties, it can only be impugned if an industrial dispute is raised before the Industrial Tribunal or the Court. It is thus held - once the reference is made under Section 10 of the said Act to be adjudicated by the Industrial Tribunal, it is the Industrial Tribunal who should adjudicate the same and the power of the Industrial Tribunal should not be usurped or taken away by the High Court in exercise of power under Article 226 of the Constitution of India - in these words:

"25. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the hope of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which has objected to the same. Recognized union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers'' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial

democracy is the bedrock of the Act", as pointed out in the case of P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, . In all these negotiations based on collective bargaining individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

29. None of the aforesaid decisions relied upon by Mr. Majumder throws light to an issue that the power under Article 226 of the Constitution of India is taken away, once a dispute of any industry touching or concerning the workmen is raised.

30. It is not a case where a workman has raised a dispute within the settlement. The question involved in this case is whether the exclusion of the married daughter from the consideration for appointment on compassionate ground offends Articles 14, 15 and 16 of the Constitution of India. It is neither a case of implementation of a scheme by the employee nor a case where the settlement is sought to be impugned by the workers'' Union on the ground of unfairness and unjust. The married daughter approached the Authority and wanted to be considered for appointment on compassionate ground. Such application is turned down by the Authority simply on the plea that the married daughter is outside the purview of Clause 9.3.3. of the National Coal Wage Agreement - VI.

31. The Division Bench in FMAT 1298 of 2009 clearly held that such exclusion offends the Constitutional mandates and, therefore, cannot withstand on its anvil. The Division Bench interfered in exercise of power of judicial review and directed the application to be considered treating the dependent to be competent under the Clauses applicable in respect of appointment on compassionate ground.

32. This Court, therefore, finds that the action of the Authority in rejecting the application filed by the petitioner solely on the ground that the married daughter is outside the purview of Clause 9.3.3. of the National Coal Wage Agreement - VI is bad and cannot be sustained.

33. The order dated 24th April, 2014 impugned in this writ petition is hereby quashed and set aside.

34. The appropriate officer of the Eastern Coalfields Limited is directed to consider the application on its merit treating the same to have been filed by a dependant eligible under Clause 9.3.3. of the National Coal Wage Agreement - VI.

35. It is expected that the appropriate Authority would take the decision within eight weeks from the date of the communication of this order.

36. With these observations, the writ petition is allowed.

37. There will be no order as to costs.

38. After dictation of the judgment in open Court is over, Mr. Majumder prays for stay of operation of the same.

39. This Court does not find any ground to stay the operation of the judgment. The prayer is thus refused.

40. Urgent photostat certified copy of this order, if applied for, be supplied on priority basis.