

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.2784 of 2003**

National Thermal Power Corporation Limited Korba, through General Manager, P.O. Vikas Bhawan, District Korba (CG).

---- Petitioner

Versus

1. B.K. Mishra, S/o Shri Narayan Mishra, Qtr. No.MIG-1/57 S.B. Patel Nagar, SADA Colony, P.O. Jamnipali, District Korba (CG).
2. Industrial Court, Raipur.
3. Labour Court, Bilaspur.

----Respondents

For Petitioner : Mr. Vinod Deshmukh, Advocate

For Respondent No.1. Ms. Hamida Siddiqui and Mr. Raghvendra Verma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****09/08/2017**

Heard.

(1) The petitioner-NTPC as well as respondent No.1 herein both have preferred appeals before the Industrial Court, Raipur against the order dated 29.03.1988 passed by Labour Court, Bilaspur. That appeals came-up for hearing before the Industrial Court on 03.02.1998. On that day, Mr.S.M.Mendhekar, counsel for the petitioner could not attend the hearing fixed for arguments on account of his illness and in absence of the petitioner's counsel, the

appeals were heard. The petitioner's appeal being Appeal No.154/MPIRAct/88 was dismissed and the respondent No.1/employee's appeal being Appeal No.213/MPIR Act/88 was allowed directing the petitioner-NTPC to reinstate the respondent No.1 with full back wages.

(2) Feeling aggrieved against the order of Industrial Court, Raipur, the petitioner filed application under Rule 85 of MPIR Act read with Order 41 Rule 21 of CPC and application under Section 107/64 of MPIR Act for setting aside the ex-parte order dated 03.02.1998. The said applications have also been dismissed by the Industrial Court, Raipur by its order dated 31.01.2003 finding no sufficient cause to allow the applications against which, this writ petition has been filed by the petitioner-NTPC.

(3) Mr. Vinod Deshmukh, counsel appearing for the petitioner-NTPC would submit that the counsel for the petitioner-NTPC of the court below could not attend the hearing fixed for arguments on 03.02.1998 on account of his illness and therefore, Industrial Court ought to have adjourned the matter.

(4) Per contra, Ms. Hamida Siddiqui, counsel appearing for the respondent No.1 would oppose the submission made by learned counsel for the petitioner and support the impugned order.

(5) I have heard learned counsel for the parties, considered their rival submissions made hereinabove and perused the material

available on record.

(6) It is true that the counsel for the petitioner-NTPC could not appear before the Industrial Court when the appeal of the petitioner-NTPC came-up for hearing on 03.02.1998 on account of his illness and the Industrial Court ought to have accommodated the petitioner as for the default of his counsel, the party cannot be allowed to suffer.

(7) In this regard, the decision of the Supreme Court in the matter of **Rafiq & another Vs. Munshilal & another** reported in **AIR 1981 Supreme Court 1400** may be referred profitably in which the Supreme Court has clearly held that the party cannot suffer for the inaction, deliberate omission or misdemeanour of his counsel and held as under:-

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the

proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the

High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K. Sanghi.”

(8) Following the principle of law laid down by the Supreme Court in the matter of Rafiq (supra) to the fact of present case, it would appear that Mr. S.M. Mendhekar, counsel for the petitioner had regularly appeared before that Court and represented the petitioner-NTPC and petitioner-NTPC contested the appeal by filing of his own appeal as well as opposing the appeal preferred by the respondent No.1/employee, in that case the Industrial Court ought to have heard the counsel for the petitioner-NTPC by adjourning the matter even for short while.

(9) In view of aforesaid discussion, the writ petition is allowed to the extent indicated hereinabove. The Appeal filed by the petitioner being Appeal No.154/MPIR Act/88 and Appeal filed by the respondent No.1/employee being Appeal No.213/MPIR Act/88 both and the applications are hereby set-aside. It is directed that both the Appeals be restored to its original number in the Industrial Court and

be disposed of after proper opportunity of hearing to the parties and in accordance with law within a period of three months from the date of production of certified copy of this order.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-