

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 1271 of 2020

**M/s. Hindusthan National Glass and Industries Limited
Vs.
The State of West Bengal, and Others.**

For the Petitioner: Mr. Ranjay De, Adv.
Mr. Basabji Banerjee, Adv.,

For the Respondent No. 2: Mr. Subhadip Bhattacharya, Adv.
Mr. Balaram Patra, Adv.,

For the State: Mr. Susanta Pal, Adv.
Ms. Ananya Neogi, Adv.,

Heard on: 27.09.2021

Date : 30.09.2021

SUVRA GHOSH, J. :-

1. The prayer of the writ petitioner in the present writ petition is as follows:

*“a) Issue a writ and/or order and/or direction
in the nature of Mandamus, directing
forthwith cancel, set aside, withdraw
and/or rescind the impugned orders dated
18.09.2018 (being Annexure – P/13) and
04.09.2019 (being Annexure – P/16).*

- b) *Issue a writ and/or order and/or direction in the nature of Prohibition, prohibiting from giving any effect to the said impugned orders being Annexure – P/13 and Annexure – P/16 respectively;*
- c) *Issue of a Writ of a Certiorari and Writ in the nature thereof commanding the Respondents and/or each one of them to produce the records relating to Annexure – P/13 respectively for their examination and for quashing the same if found unconstitutional, illegal, void and contrary to law and for doing conscionable justice to the petitioner.”*

2. The petitioner's case, in a nutshell, is that the Respondent Union espoused causes of four dismissed employees of the petitioner company namely Tridiv Routh, Ranjan Debnath, Dipu Manna and Subir Kumar Ghosh and an order of reference dated 10.03.2014 was sent to the Learned Second Industrial Tribunal for adjudication. The Respondent Union filed written statement before the Tribunal on 24.09.2014 contending inter-alia that the Union enjoys support of substantial number of workmen working in the company. The petitioner company challenged the maintainability of the reference by submitting a written statement before the Tribunal on 07.01.2015 stating inter-alia that the Union had no locus standi to represent the aggrieved

workmen. The petitioner's application challenging the maintainability of the reference was turned down by the Tribunal by an order dated 08.10.2015. Following such order, both the parties participated in the proceeding before the Tribunal and adduced evidence in support of their respective contentions. The petitioner company filed a further application before the Tribunal on 09.02.2018 praying for a direction upon the Respondent Union to produce certain documents which were required for adjudication of the dispute. By an order dated 18.09.2018 the Tribunal rejected the said application on merit. The application for reviewing/recalling such order was also dismissed by the Tribunal on 04.09.2019. Being aggrieved by the said order of the Tribunal the petitioner has filed the present writ petition, praying for a direction upon the Tribunal to withdraw/set aside the impugned orders dated 18.09.2018 and 04.09.2019.

3. Referring to section 11(3) of the Industrial Disputes Act, 1947 learned advocate for the petitioner has submitted that the Tribunal is vested with the same powers as a civil court under the Code of Civil Procedure 1908, in respect of compelling production of documents. Learned advocate has placed reliance on a judgment in Sugandhi (Dead) By Lrs & Anr. Vs. P. Rajkumar Rep. By his power agent Imam Oli reported in 2020(12) Scale 440 in support of his contention. Learned advocate has drawn the attention of the court to the order of reference dated 10.03.2014 which was served upon the Respondent Union and not upon the individual workers. Learned advocate has also taken the court to the written statement submitted on behalf of the concerned workmen by the Respondent Union. It is submitted

on behalf of the petitioner that as the concerned workmen have been represented by the Respondent Union before the Tribunal all throughout, the workmen are debarred from taking refuge under section 2A of the 1947 Act. In conclusion the petitioner prays for setting aside the impugned orders and a direction upon the Tribunal to direct production of documents as mentioned in the petition filed by the petitioner on 09.02.2018, by the Respondent Union.

4. Vehemently opposing the prayer of the petitioner, the Respondent Union has submitted that in view of section 2A of the Industrial Disputes Act, 1947 representation of a workman through a Union is irrelevant and the workman can contest the case before the Tribunal in his individual capacity. The workmen were terminated from service in 2012 and the order of reference was issued on 10.03.2014. The petitioner company is deliberately protracting the proceedings before the Learned Tribunal without any reasonable cause and the impugned petition for production of documents was filed after conclusion of evidence on behalf of the Union. Learned advocate has placed reliance on judgments in M.N. Pramanick and others. Vs. The Eighth Industrial Tribunal and others reported in C.R. No. 196 (W) of 1978 dated March 24, 1982 and Framatone Connectors O/E/N Ltd. v/s. Framatone Connectors O/F/N Workers Union reported in Laws(Ker) 2002 91.

5. Respondent No. 1 State of West Bengal is represented.

6. I have considered the submissions made on behalf of the parties.

7. Section 11(3)(b) of the Industrial Disputes Act, 1947 is set out:-

“(3) Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

(a)

(b) Compelling the production of documents and material objects;”

8. Order 11 Rule 12 of the Code of Civil Procedure envisages that the court may, on an application filed by one of the parties, direct the other party to make discovery on oath of the documents if the court is satisfied that production of such documents is necessary for proper adjudication. The judgment relied upon by the petitioner says that the court should take a lenient view when an application is made for production of documents. What falls for consideration is whether production of such documents pertaining to the Respondent Union is relevant for the adjudication of the case before the Tribunal.

9. It is not in dispute that the concerned workmen have been contesting the case under the umbrella of the Respondent Union. Written statement was submitted by the Respondent Union on behalf of the concerned workmen.

The documents called upon by the petitioner from the Respondent Union before the Learned Tribunal are as follows:-

- “i) Constitutions and/or Rules of the Union under reference.
- ii) Registers of membership of the Union under reference.
- iii) Resolution books of the Union under reference.
- iv) Annual returns of the said union submitted before the Trade Unions for the period from 2010 onwards.
- v) Subscription Book/Register of the Union.”

10. It is submitted on behalf of the Union that the workmen are not in possession of such documents. The workmen, in their individual capacity, has the right to contest the case before the Tribunal even without being represented by the Union, in view of the provision of section 2A of the 1947 Act.

11. Section 2A of the Act of 1947 is reproduced:-

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. - [(1)] Where any employer discharges, dismisses, retrenches or

otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]”

12. In other words, a dispute between a workman terminated from service and his employer shall be deemed to be an Industrial Dispute even without participation of the Union in the dispute. The ratio of the judgment relied upon by the Union is squarely applicable to the present case. The judgment reiterates the proposition of law in the statute itself to the effect that the concerned employees are the real parties to the dispute and their cause may be represented by the Union. It is immaterial as to whether the Union has any locus standi to represent the workmen or espouse their cause and also whether it represents a minority of workmen. Even if the Respondent Union is unable to produce documents as called for by the petitioner, the affected workmen can continue to contest the case and the proceedings may be continued as if it is a reference under section 2A of the Industrial Disputes Act.

13. The application dated 09.02.2018 hints at a challenge regarding maintainability of the case which has already been disposed of by the

Learned Tribunal, such order remaining unchallenged. Relevance of the documents in question has not been demonstrated in the four corners of the petition. Reference can proceed irrespective of the locus standi or representative character of the Respondent Union. The matter in issue before the learned Tribunal is an industrial dispute pertaining to dismissal of four employees of the petitioner company. Production/non-production of documents concerning the Union has no bearing with the merits of the case and such documents shall serve no purpose so far as the case is concerned. Maintainability of the case, which has been set at rest by the Tribunal, cannot be revisited on the anvil of documents which have no relevance to the case.

14. The orders impugned are well reasoned orders and do not suffer from any illegality or lack of jurisdiction. As such, no interference by this court is called for.
15. The writ petition being devoid of merit, is liable to be dismissed.
16. Accordingly, W.P.A. 1271 of 2020 is dismissed.
17. There shall however be no order as to costs.
18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)