

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE
(VIA VIDEO CONFERENCE)**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

W.P.O No.166 of 2020

**THE CALCUTTA GUJRATI EDUCATION SOCIETY AND ANR.
-Versus-
STATE OF WEST BENGAL AND ORS.**

**For the petitioners : Mr. Soumya Majumdar,
Ms. Noelle Banerjee,
Mr. Dipak Dey**

For the Respondent No. 1 : Mr. Amitava Mitra

**For the Respondent No. 2 : Mr. Asish Kumar Das,
Mr. Baharu Jamal,
Mr. Sunny Nandy,**

**Heard on : 14.01.2021, 02.02.2021 &
04.02.2021**

Judgment on : 21.12.2021

Abhijit Gangopadhyay, J .:

1. The Writ Application has been filed by the employer namely Calcutta Gujarati Education Society. Its honorary secretary is the other petitioner.

2. It has been directed against an order of the judge of the first industrial tribunal being order No. 108 dated 18.3.2019. By this order the industrial tribunal has rejected an application filed by the petitioners before the tribunal raising preliminary issue.

From the pleadings of the writ Application and the written note of argument filed by the write petitioner it is found that the petitioner raised the question of jurisdiction of the tribunal.

In fact this is the second round of litigation before this court.

3. In the first round of litigation the award of the said tribunal dated February 22, 2008 was challenged by filing WP No. 1036 of 2008. The matter was adjudicated by this court on merit and the writ application was allowed and impugned order was set aside and in the said writ application in the last paragraph this court held as follows.

“Treating the case as one of open remand entitling the parties to raise all questions and issues afresh, the tribunal shall make a fresh award on the basis of the evidence already recorded but after giving the parties fresh opportunity of hearing.”

4. Using this order of this court the petitioner filed an application raising preliminary issue questioning the jurisdiction of the tribunal in deciding the dispute.

The respondent in his arguments (mentioned in the notes of argument also) has submitted that on 12.7.2004 the tribunal passed an order holding that the domestic enquiry was not valid.

Thus, the tribunal exercised its jurisdiction while holding so.

This order of the tribunal dated 12.7.2004 was not challenged by the petitioner.

5. It is also found from the order passed by the writ court in the earlier writ application in WP No. 1036 of 2008 that the court did not permit the petitioner to raise a question for the first time in that court : the question was whether the petitioner was an industry or not.

Therefore, the petitioner now cannot raise the question in an indirect manner by raising the question of jurisdiction of tribunal when the writ court in the earlier writ petition did not allow the petitioner to raise the question as to the status of the petitioner No. 1 as industry as it was not raised before the tribunal at the first opportunity. Therefore it was decided by this court that the tribunal had the jurisdiction to adjudicate the matter otherwise the earlier writ court would not have granted liberty to the parties to raise all questions before the tribunal. Here all questions did not mean the question of jurisdiction as the writ court as the beginning of its judgment and order did not allow the petitioner to raise the question of status of the petitioner as an “industry.”

6. The petitioners have exactly done the opposite and have tried to put the clock back by raising again the question of jurisdiction of the tribunal. When the writ court in the earlier writ application

decided the matter on merit and did not allow the petitioner therein to raise the question relating to “industry” it is not understood how now the petitioner can raise the question of jurisdiction of the industrial tribunal.

A judgment has to be read as a whole. By reading only the last 5 or 6 lines of the judgment nobody will do justice either to litigants or to the disputed questions or to the adjudication thereof.

7. When the writ court in the earlier writ application shut out the petitioner from raising the question of character of the petitioner No. 1 whether it is “an industry”, the last few lines of the judgment has to be understood on the basis of a whole reading of a judgment and thus it would be found that the writ court never meant that use of the words “open remand” by the said writ court and the liberty granted to the parties to raise all question and issues afresh, the writ court never intended to grant the liberty to the petitioner to raise the question as to the character of the petitioner No. 1 as an ‘industry’ and therefore if the question as to the character of the industry is not allowed to be raised by the petitioner, the petitioner cannot also raise the question of jurisdiction of the tribunal because an industrial tribunal has the jurisdiction to decide an industrial dispute.
8. The petitioner has filed one written notes of arguments enclosing therein the judgments reported in AIR 1973 SC; (1972) 1 SCC 595; (2018) 4 SCC 483; 100 CWN 128; 2007 (3) CHN 558 and 1997 (1) CHN 218.

In the facts and circumstances of the case none of the judgments come to the aid of the writ petitioner. Those judgments are not at all applicable in the facts and circumstances of the case.

9. By filing the application raising the preliminary question the petitioner has deliberately tried to waste time in the adjudication process. Therefore this writ Application is dismissed with a cost of Rs. 20,000 (Rupees Twenty Thousand only) to be paid to the respondent No. 2 within a period of 2 weeks from date.

(Abhijit Gangopadhyay, J)