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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th December, 2021

+ **W.P.(C) 13481/2021 & CM APPLs. 42507-09/2021**

NANDI GAS DISTRIBUTORS Petitioner

Through: Mr. Vikas Khatri and Mr. Anmol
Singh, Advocates. (M:9811121312)

versus

OM PARKASH

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. None appears for the Respondent- Workman. Advance copy of this petition has been served upon the Workman by email on lcf223@gmail.com and the proof of service is attached. The said email is stated to be the email address of the authorised representative of the Workman. In addition, when the matter was taken up in the morning Id. Counsel for the Petitioner-Management was requested to contact the authorised representative of the Workman so that he can enter appearance in the matter. However, the Id. Counsel for the Management after telephonically contacting the authorised representative of the Workman informs this Court that the authorised representative is stated to be busy in another case before another Court, and would not be able to appear in this matter. Accordingly, this Court proceeds further in the matter.

3. Heard the Id. Counsel for the Petitioner. The present writ petition has been filed on behalf of the Management challenging the order dated 22nd October, 2021 passed by the Presiding Officer, Labour Court-IV, Rouse Avenue Courts, Delhi by which the right of cross-examination of the Management has been closed in the claim preferred by the Workman/Respondent bearing **LIR No. 1146/2019** titled ***Om Prakash v. M/s. Nandi Gas Distribution.***

4. Mr. Khatri, Id. Counsel for the Management submits that on 22nd October 2021, when the matter was taken up and the impugned order was passed, as per the duty Roster announced by the Principal District and Sessions Judge, the Court was to hold virtual hearings. However, the hearing was held in physical court. He submits that despite he waiting for the virtual court proceedings to commence and having made repeated attempts and requests to join virtually, there was no provision *qua* the same that was made available to him. He submits that he contacted the Reader at about 11:20 A.M., and was informed that the Presiding Officer is holding Court physically. He then deputed his colleague to appear before the Court and request for an adjournment in the matter. However, the said adjournment was refused and an order closing the Management's right to cross-examination was passed by the Presiding Officer. It is this order that he wishes to assail in the present petition.

5. A perusal of the order on the previous date dated 23rd September, 2021, passed by the Presiding Officer, shows that the Workman was examined-in-chief on the said date, and a copy of the affidavit in evidence of the Workman was supplied to the authorised representative of the Management for cross-examination on the next date. The matter was then

adjourned to 22nd October, 2021 for the cross-examination of the Workman by the Management. The said order dated 23rd September 2021 reads:

“WW-1 is examined-in-chief and his cross-examination is deferred as copy of affidavit supplied today to the AR for the Management.

An application filed on behalf of the workman for seeking direction to the management to produce the record of the workman. Copy supplied. Heard and allowed.

Management is directed to produce the record of the workman on the next date of hearing.

Put up for cross-examination of workman on 22.10.2021.”

Thereafter, the duty Roster for the month of October, 2021, which was announced by the Principal District and Sessions Judge for Rouse Avenue Courts Complex on 29th September 2021, clearly shows that only for the following dates - 4th October, 2021, 6th October, 2021, 8th October, 2021, 11th October, 2021, 16th October, 2021, 21st October, 2021, 23rd October, 2021, 26th October, 2021, 28th October, 2021 and 30th October, 2021, the Court of this Presiding Officer was to be held physically. Obviously, on all the other dates, the Court of this Presiding officer was scheduled to be held virtually i.e., through video-conferencing, and this is what was informed to the Advocates, Legal practitioners, Litigants and Authorised Representatives through the said circular of Roster. This is also clear from the note mentioned in the said circular of Roster dated 29th September 2021 which reads as under:

“ The Judicial Officers, who shall not be holding Physical Courts on a particular day as per this roster, shall continue to hold courts through Video

Conferencing, as per the existing arrangement, on non-physical days.”

The circular of the Roster, goes on to further state that even on designated physical days, when a request is made on behalf of parties/ counsel, the Court shall, wherever possible, permit hybrid/ video conference hearing. The said order reads as under:

“On physical hearing days, the Courts shall wherever possible, permit hybrid/video conferencing hearing where a request to such effect is made by any of the parties and/or their counsel.”

6. The date of 22nd October, 2021 was, in any case a date where the concerned Presiding Officer was scheduled to, according to the circular of roster, hold hearings by video conferencing. However, a perusal of the impugned order clearly shows that the said Presiding Officer held physical hearings on the said date.

7. Mr. Anmol Singh, the colleague of the Management’s counsel, who has also appeared before the Court today, submits that these facts were brought to the notice of the Presiding Officer on the said date, however, despite the same, the impugned order closing the Management’s right to cross-examine the Workman was closed merely due to the fact that the main counsel could not appear physically for cross examining the witness. The said order dated 22nd October, 2021 which is impugned herein, reads as under:

“ The main AR of the management did not appear to cross-examine the workman without any ground despite repeated calls and pass over the matter since morning. Request for further adjournment is made

without any ground which is vehemently opposed. Management has not produced even the documents as directed on the last date of hearing while allowing the application of the workman. As the workman is not cross-examined despite opportunities without any ground, right of the management to cross-examine the witness is closed and the workman is discharged.

In view of the submissions by AR for the workman that no other witness remains to be examined on behalf of the workman, workman's evidence is closed.

Put up for management's evidence on 26.11.2021. One week advance copy of the affidavit be supplied to AR for the workman positively."

8. In the above order, the issue raised by the Management in this petition that a request was made to permit the counsel for the Management to join virtually in terms of the Roster, has also not been recorded. It is also not recorded that the junior counsel appeared and apprised of the actual position that the main counsel was waiting to join virtually to conduct the cross-examination. Clearly, the opportunity to cross-examine a witness is a substantive right of the Management. The said right has been taken away by the impugned order due to confusion which may have prevailed in the duty Roster, as the Court, although scheduled to be held virtually, was held physically on the said date. Accordingly, since this confusion has led to the Management being deprived of its substantial right, this Court is of the opinion that the impugned order is not sustainable. The order is accordingly set aside.

9. The Management shall now be given an opportunity to cross-examine the Workman on the next date fixed before the Labour Court, i.e., 22nd

December, 2021. After the cross-examination of the Workman, evidence of the Management shall proceed further in the matter, in accordance with law.

10. With these observations, the present petition, along with all pending applications, is disposed of. Let a copy of the present order be sent to the concerned District and Sessions Judge, in order to ensure that such confusion does not arise, and hearings are permitted in the Labour Courts in accordance with the Roster which was announced, complying with the administrative directions issued by the Delhi High Court, as well as the Division Bench of this Court from time to time. In any event, the attempt ought to be to ensure that substantive rights of litigants are not prejudiced due to physical non-availability of counsel.

PRATHIBA M. SINGH
JUDGE

DECEMBER 8, 2021

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