

29
15.11.2022
sb
Ct 550

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11491 of 2022

Amrutanjan Healthcare Limited
Vs.
The State of West Bengal & Ors.

Mr. Anant Kumar Shaw,
Mr. Mainak Gungaly
.... For the petitioner.

Mr. Suvadip Bhattacharjee,
Mr. Balaram Patra
... For the respondent no.3.

The present writ application has been filed *inter alia* challenging the order dated 28th March, 2022 passed by the learned 5th Industrial Tribunal, Kolkata, in Case No.VIII-25/2011. By the aforesaid order the application filed by the petitioner on 6th January, 2022 for appointment of an interpreter has been rejected.

Mr. Shaw, learned advocate representing the petitioner submits that in a proceeding under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), pending before the 5th Industrial Tribunal, Kolkata the petitioner filed an application to issue summons to one Mr. V. Dhamodaran for being examined as a witness. Records would reveal that on the basis of the aforesaid application the Tribunal had issued summons in Form D4 calling upon Mr. V. Dhamodaran to appear before the Tribunal on 23rd

November, 2021. On being so summoned Mr. V. Dhamodaran had appeared and was examined by the petitioner. Mr. Shaw further submits that since Mr. V. Dhamodaran's mother tongue is Tamil and he is not fluent either in English or in Hindi or in Bengali, an application was made before the Tribunal to permit Mr. V. Dhamodaran to be examined with the help of an interpreter. In support of the above contention Mr. Shaw relies on an application filed by the petitioner on 6th January, 2022. The said application was contested by the respondent no.3 herein by filing a written objection. Upon hearing the parties, the aforesaid application was rejected by the Tribunal by its order dated 28th March, 2022. Mr. Shaw submits that the witness has little knowledge in English, he can speak Hindi a little bit, however, he cannot read or write in Hindi. This fact is recorded in the deposition of Mr. V. Dhamodaran. He submits that a person has a right to make statement in his own mother tongue especially when he is uncomfortable in other language. Mr. V. Dhamodaran's mother tongue is Tamil, he has a right to have his testimony recorded with the help of an interpreter. The right to give testimony in Tamil which is his mother tongue, has been recognized by the Constitution of India where Tamil has been classified as a schedule language. According to Mr. Shaw the order passed by the Tribunal is perverse and should be set aside.

Per contra, Mr. Bhattacharya, learned advocate representing the respondent no.3 submits that the present proceeding has been initiated on the basis of an order of reference made by the appropriate Government under the said Act. The reference relates to a dispute in connection with withdrawal of Variable Dearness Allowance (VDA). The aforesaid reference has been pending for a long time. Mr. V. Dhamodaran is the petitioner's witness. However, the petitioner instead of directly producing him had summoned Mr. V. Dhamodaran through Court. By drawing attention of this Court to the depositions of Mr. V. Dhamodaran dated 23rd November, 2021, Mr. Bhattacharya submits that despite Mr. V. Dhamodaran expressing before the Tribunal that he can read and write English little bit, he had deposed in English throughout and had no difficulty when he was examined by the petitioner. A total number of 30 questions were put to Mr. V. Dhamodaran by the petitioner. Subsequently, when the cross-examination commenced total number of seven (7) questions were put to him. At no point of time did the witness express any difficulty in understanding or in responding to the questions put to him. Cross-examination was deferred at the instance of the respondent no.3. Subsequently, on 6th January, 2022 an application was filed by the petitioner *inter alia* praying for a direction to engage an interpreter, conversant in Tamil.

Mr. Bhattacharya submits that the request for appointment of an interpreter has been made as and by way of an afterthought. The witness had never felt any difficulty in responding to the questions put to him during his examination either by the petitioner or by the respondent no.3. No prayer was made by the witness during the course of the witness action on 23rd November, 2021 that he requires an interpreter. The present application is an abuse of process of Court, intended to delay the proceedings and should be dismissed.

I have considered the submissions made by the learned advocates appearing for the respective parties and the materials on record. I find that Mr. V. Dhamodaran had been summoned at the instance of the petitioner. It is does not appear from the depositions of Mr. V. Dhamodaran which are recorded in English that he had any difficulty in answering the questions. Although it would appear that Mr. V. Dhamodaran at the very outset had indicated to the Tribunal that he can read and write English a little bit and can only speak in Hindi a little and cannot read or write in Hindi, it, however, does not appear that Mr. V. Dhamodaran either at the initial stage or subsequently in course of his witness action on 23rd November, 2021 had made any prayer before the Tribunal that without an interpreter it will be difficult for him to depose. Records would reveal that he had appeared before

the Tribunal upon being summoned and ordinarily therefore if he felt any difficulty in deposing, he ought to have at the very outset, made a prayer before the Tribunal to permit him assistance of an interpreter. In the present case, no such prayer has been made. Subsequently, after the matter was adjourned, by letter dated 14th December, 2021 Mr. V. Dhamodaran had requested the petitioner to arrange for a translator. Mr. V. Dhamodaran, however, did not apply directly before the Tribunal. Interestingly, the letter at page 24 of the writ application has been signed by Mr. V. Dhamodaran in English.

Sufficient reasons have been provided in the order passed by the learned 5th Industrial Tribunal, Kolkata, West Bengal.

The tribunal while dealing with factual issues including demeanor of the witness, arrived at a specific finding and I do not find any error. The order passed by the Tribunal also does not suffer from any infirmity or jurisdictional error.

No case warranting interference has been made out.

The present application, being WPA 11491 of 2022 is liable to be dismissed and is accordingly dismissed.

There shall be no order as to costs.

Urgent Photostat copy of this order, if applied for, be

made over to the parties upon compliance of all formalities.

(Raja Basu Chowdhury, J.)