

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10977 of 2012

***The Managing Director,
Bargarh Coperative Sugar Mills
Ltd.***

.....

Petitioner

Mr. D.K. Pani, Advocate

-versus-

***The Presiding Officer,
Industrial Tribunal, Goutam Nagar,
Bhubaneswar and Ors.***

.....

Opposite Parties

Mr. P.K. Das, Advocate
(Intervenor)

Mr. J. Sahoo, Advocate
(Intervenor)

**CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO**

**ORDER
07.09.2022**

Order No.

07.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D.K. Pani, learned counsel appearing for the Petitioner and Mr. P.K. Dash and J. Sahoo, learned counsel appearing for the workman intervenors.
3. Even though the workers union has been impleaded as the Opposite Party No.3, but there was no representation. We have been apprised that in the Labour Court proceeding the workers are representing their respective cases individually. The small issue falls now for our consideration in this writ petition. It has been stated by Mr. Pani, learned

counsel for the Petitioner that despite drawing attention of the Labour Court in the proceeding at the first instance, copy of the claim statement was not supplied to the Petitioner (the Management). Even the prayer for filing the fresh written statement in response to the claim statement as filed by the union of the workmen.

4. From the order dated 2.6.2012 as delivered in I.D. Case No.53 of 2011 it surfaced that the Presiding Judge has observed that, each of the workmen have filed separate claim statement. For filing of four separate claim statement, the reference has been split-up in four different proceedings being I.D. Cases No.53(A)/2011, 53(B)/2011, 53(C)/2011 and 53(D)/2011. So far as the records of reference and other relevant papers are concerned, those have been maintained in a common care file. It would be apparent from the said order that, the workmen objected to the prayer of the Management in order to have the copy of the claim statement by contending that according to the pre-amended Orissa Industrial Disputes Rules, the Management was not required to have a copy of the claim statement. In this context, the Industrial Tribunal, Bhubaneswar has observed as follows:

“This submission seems to be quite forceful. Rule-10B of the Orissa Industrial Disputes Rules, 1959 under-gone an amendment vide Notification No.11688/LE dt. 6.6.86. The pre-amended Rule did not require the workmen to serve a copy of the claim

statement on the Management. It is only after the Rule was amended the workmen is now required to serve a copy of the claim statement on the Management. The present case is quite old. When the parties filed their claim statement/written statement the pre-amended Rule was in force. Therefore, it cannot be said that any gross irregularity has been committed by not serving copy of the claim statements on the Management before it was called upon to file its written statement. Therefore, on the ground stated in the petition under consideration the workmen cannot be directed to serve copy of their claim statements on the Management and to permit the Management to file fresh written statement after being served with the copy of the claim statements. If so advised, the Management may seek for permission to amend its written statement.”

5. It is apparent, from the order of reference that the said reference was made on 19.10.1978. The said amendment in Rule-10B of the Orissa Industrial Disputes Rules, 1959 came into being on 06.07.1986. Therefore, the observation of the Industrial Tribunal is not factually erroneous. Before 06.07.1986, there was no express provision mandating supply of the claim statement, complete with all relevant documents, list of reliance and witnesses within fifteen days of the receipt

of the order of reference or forwarding the copy of such statement to each one of the Opposite Parties involved in the dispute. Before the said Notification dated 06.07.1986, admittedly, there had been no provision for supplying a copy of the statement of claim to the Opposite Parties. Mere absence of any provision cannot scuttle the requirement of natural justice. Compliance of the principles of natural justice whenever not expressly provided in a statute has to be read into the said statute to make the statute compliant of the natural justice, unless the same is expressly taken away. As such, without going into the core of the dispute, we are of the view that the observation of the Industrial Tribunal may be technically correct, but such observation stands contrary to the principles of natural justice. Someone is not expected to raise his/her point without a copy of the statement of claim from the person who is seeking relief based on the reference. It was the duty of the Industrial Tribunal/Labour Court to ask the workman to supply a copy of his/her statement of claim to the Opposite Party (the Management).

6. Since pendency is quite long in this case, we would direct the Industrial Tribunal, Bhubaneswar to supply a copy of the statement of claim, as filed by the workmen to the Petitioner (the Management) within seven days from the date of receipt of this order. Further, the Opposite Party (the Management) shall be provided a 15 days time to file their statement/counter statement in the Industrial Tribunal.

Thereafter, the reference be determined in accordance with the law, preferably within six months from the date of filing of the statement by the Opposite Party, the writ petitioner herein (the Management). No adjournment be granted to either of the parties unless it is shown emergent.

7. In terms of the above, this writ petition stands partly allowed and disposed of.

8. The order dated 26.06.2012 passed in Misc. Case No.9545 of 2012 staying the further proceeding of I.D. Case No.53 of 2011 pending in the Industrial Tribunal, Bhubaneswar stands vacated.

9. Industrial Tribunal may issue fresh notice to those workmen who will be found to have not been participating in the proceeding.

10. Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge