



\$~39 to 44

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

+ W.P.(C) 1642/2021, CM APPL. 4694/2021, CM APPL. 37401/2021

INDRAPRASTHA POWER GENERATION CO LTD Petitioner

Through: Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advs.

versus

SOMEER CHATERJEE (DECEASED) THROUGH LRS.

.....Respondent

Through: Mr. Salim A. Inamdar, Mr. M. H.
Khan, Mr. Abhishek and Ms. Shruti,
Advs.

40

+ W.P.(C) 1643/2021, CM APPL. 4697/2021, CM APPL. 37405/2021

INDRAPRASTHA POWER GENERATION CO LTD Petitioner

Through: Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advs

versus

KRISHAN CHAKERVORTY

..... Respondent

Through: Mr. Salim A. Inamdar, Mr. M. H.
Khan, Mr. Abhishek and Ms. Shruti,
Advs.

41

+ W.P.(C) 1645/2021, CM APPL. 4702/2021, CM APPL. 37431/2021

INDRAPRASTHA POWER GENERATION CO LTD Petitioner

Through: Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advs.



versus

NAVEEN CHANDER JOSHI

..... Respondent

Through: Mr. Salim A. Inamdar, Mr. M. H. Khan, Mr. Abhishek and Ms. Shruti, Adv.

42

+ W.P.(C) 1646/2021, CM APPL. 4705/2021

INDRAPRASTHA POWER GENERATION CO LTD Petitioner

Through: Mr. Vinay Sabharwal and Mr. Karunesh Shah, Adv.

Versus

AMARJEET SINGH

..... Respondent

Through: Mr. Salim A. Inamdar, Mr. M. H. Khan, Mr. Abhishek and Ms. Shruti, Adv.

43

+ W.P.(C) 1647/2021, CM APPL. 4708/2021

INDRAPRASTHA POWER GENERATION CO LTD Petitioner

Through: Mr. Vinay Sabharwal and Mr. Karunesh Shah, Adv.

versus

RAMA KANT SHARMA

..... Respondent

Through: Mr. Salim A. Inamdar, Mr. M. H. Khan, Mr. Abhishek and Ms. Shruti, Adv.

44

+ W.P.(C) 4901/2021, CM APPLs. 15066-67/2021



INDRAPRASTHA POWER GENERATION CO. LTD. Petitioner

Through: Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advs

versus

NAVIN CHANDER JOSHI

..... Respondent

Through: Mr. Salim A. Inamdar, Mr. M. H.
Khan, Mr. Abhishek and Ms. Shruti,
Advs.

Date of Decision: 09th September, 2022.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petitions have been filed impugning and seeking to set aside the Order dated 23rd December, 2019, passed by the learned Presiding Officer, Labour Court, New Delhi, vide which, the learned Labour Court, while deciding on the preliminary issue of legality and validity of the domestic inquiry conducted with respect to the workmen herein, held the same to be in violation of principles of natural justice and set aside the same.
2. Briefly stated the facts as alleged in the petition are that the respondent workmen herein participated in a dharna organized by their trade union. As a result, management issued a show cause notice to the workmen, including the respondents herein, who participated in the dharna. Domestic inquiry was conducted, whereby the penalty of dismissal from services, was imposed on the workmen. Respondent workmen challenged the said domestic inquiry and the consequent



dismissal order by filing proceedings under section 10 (4), Industrial Disputes Act, 1947, before the learned Labour Court, and the following reference was framed to be adjudicated and determined:

"Whether there was a fair and proper enquiry in accordance with the principles of natural justice and the service rules governing the workman ? OPW".

3. The legality and validity of the aforementioned domestic inquiry was treated as a preliminary issue and both the parties led their evidence on the issue of inquiry first. Learned Labour court upon appreciating evidence and materials on record returned a categorical finding that the domestic inquiry conducted by the management against the workmen were not as per principles of natural justice and set aside the same. Aggrieved thus, the petitioner management has preferred the present petitions assailing the same.
4. Learned counsel for the petitioner submits that the learned Labour Court has fallen into grave error. The impugned order suffers from legal infirmity. It has been submitted that the facts of the present case are distinguishable from the facts contained in the order/judgment delivered in "**Cooper Engineering Ltd. v. Shri P.P. Mundhe**" (1975) 2 SCC 661 and "**D.P. Maheshwari v. Delhi Administration**" (1983) 4 SCC 293 by the Supreme Court.
5. Learned counsel for the petitioner has submitted that the issue in the present case regarding the validity of the inquiry conducted against the respondent-workman is in fact final in nature. It has been stated to be preliminary but the Labour Court has given its final verdict as to



the validity of the inquiry.

6. Learned counsel submits that therefore the finality of this order is to be determined by the superior courts i.e. High Courts and the Supreme Court before proceeding further.
7. Per contra, learned Counsel for the respondent has submitted that consequent to setting aside the domestic enquiry, learned Labour Court had granted the management as per their request, an opportunity to lead evidence in support of its allegations against the respondent workmen. However, despite being granted a second chance to prove its case, petitioner management has parallelly challenged the decision on the preliminary issue by way of the present petitions. Learned Counsel for the respondent submits that the present petitions against the decision of the Learned Labour Court on the preliminary issue of validity and legality of domestic enquiry is not maintainable for the following reasons:
 - i. It is barred by the dicta of the Supreme Court. Reliance is placed on “*Cooper Engineering Ltd. v. Shri P.P. Mundhe*” (1975) 2 SCC 661; “*D.P. Maheshwari v. Delhi Administration*” (1983) 4 SCC 293 and *National Council for cement & Building Materials v. State of Haryana* (1996) 3 SCC 206 ;
 - ii. It is barred by estoppel premised on the doctrine of election. Reliance is placed on “*National Highways Authority of India v. Panipat Jalandhar NH-1 Tollways Pvt. Ltd.*” FAO (OS) (COMM) 55/2021;and



- iii. It is barred by delay and laches as the present petition has been filed in January, 2021 assailing the order dated 23rd December, 2019. Thus delay of more than a year cannot be countenanced on account of the pandemic as the lock down only started in March, 2020. Therefore, the petitioner had three months time to file the present case, which is sufficient.
8. Ld. Counsel for the respondent thus submits that the impugned order does not warrant interference of this Court under its writ jurisdiction.
9. I have considered the submissions. This Court in the case of ***“Municipal Corporation of Delhi v. Jai Narain Bansal & others”*** (37(1989) DLT 183), while relying on ***“Cooper Engineering Ltd. ’s”*** case (supra), has inter alia held as under:

“5. In support of this submission, learned counsel for the respondent has placed reliance on a Judgment reported as The Cooper Engineering Ltd. V. P.P.Mundhe, AIR 1975 SC 1900. The relevant observations of the Supreme Court on this aspect are reproduced below:

" We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when matter is in controversy between the parties that question must be decided as a preliminary issue.

On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court, it will not thereafter be permissible in any proceedings, to raise the issue. We



should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

6. The observations of the Supreme Court fairly and squarely apply to the facts and the findings of the present case. Even though the enquiry proceedings have been set aside being not in conformity with the principles of natural justice, but the petitioner/management has been given another opportunity to prove the alleged misconduct by leading evidence before the Labour Court. The impugned order, thus, is an interlocutory order against which writ is not maintainable. After the parties are allowed to lead evidence, the final order will be passed by the Labour Court.”

10. In the case of “**M/S Ryan International School v. Shri Pan Singh,**” W.P. (C) 14365/2021 decided on 15.12.2021, this court while dealing with a challenge to the order passed by the learned Labour court in which the enquiry report of the petitioner/school against the respondent/workman was held to be in violation of the principles of natural justice, inter alia held as under:

“7. In the opinion of this Court, a two-tranche challenge - first against the preliminary award or opinion and thereafter against the final award, ought not to be entertained. This is the settled position of law as laid down by the Supreme Court in Cooper Engineering Limited v. Sh. P.P. Mundhe [(1975) 2 SCC 661].”



11. In **Vyasya Bank Ltd. vs. M.Namadeva Pai and Anr.**, 1994 – I L.L.N.417, the High Court of Karnataka has followed the ratio of **Cooper Engineering’s** case (*supra*) and *inter alia* held as under:

“25. That, from an analysis of the decisions aforementioned, it is clear that this Court, in exercise of its jurisdiction under Art.226 of the Constitution, shall refuse to intervene at the stage of adjudication on a preliminary issue, except in exceptional cases. It is clear that generally whenever an order on a preliminary issue, like the validity of a domestic enquiry is entertained, the proceedings before the adjudicating authority will be stalled, which results in undue delay. This prolonged litigation chokes the voice of protest besides breaking the resistance of the workmen. This Court has interfered with the orders on preliminary issue as they relate to jurisdictional issue. It is significant to note that the facts in the cases which came up for consideration before the Supreme Court and the cases which came up for consideration before this Court are distinguishable. This Court would refuse to exercise jurisdiction under Art.226 of the Constitution on the validity of a domestic enquiry as the management can challenge the very order, if worthy, even after the final award.”

12. The High Court of Rajasthan in **Manager, Poddar Spinning Mills vs. The learned Labour Court of Rajasthan and Ors.** S. B. Civil Writ Petition No.18 of 1978 decided on 25.01.1980 has *inter alia* held as under:

“10.The paramount object of the Act is industrial peace. Piecemeal decision of issues in such cases is likely to protract or prolong the litigation ad infinitum. It would not be in the interest of justice to allow a party to obtain a decision on a preliminary point, challenge the same before this Court and



thereafter before the Supreme Court to the great disadvantage of the workmen. Taking a conspectus of the circumstances of the case I am of the view that it is not a fit case in which this Court, in exercise of its extraordinary jurisdiction, should interfere with the proceedings pending before the Labour Court at this stage and quash the impugned order. It is, however, made clear that it would be open to the petitioner to challenge the decision of the Labour Court regarding the preliminary issue after the final decision of the case through on appropriate writ proceeding if so advised.”

13. Similarly, the Division Bench of the High Court of Calcutta in ***Sonodyne Television Co. Employees Union & Ors. vs. Sonodyne Television Co. Employees’ Union and Ors.***, F.M.A.T. No.3689 of 1994 decided on 27.03.1995 took into account the judgment of the Supreme Court in ***Cooper Engineering’s*** case (*supra*) and ***D.P. Maheshwari’s*** case (*supra*) as well as the judgment of High Court of Calcutta in ***Peerless Employees’ Union vs. Peerless General Insurance and Investment Co. Ltd.***, F.L.R. 1991 (62) page 596 and inter alia held as under:

“5. Considering the facts and circumstances of the case we are of the view that the scope of preliminary issuers quite limited. It is not necessary to consider the correctness of the decision made in the domestic enquiry on merits at that stage. The tribunal is required to decide the dispute and ultimately give his award. For deciding the preliminary issue the correctness of the ultimate decision made by the tribunal is not required to be considered at this stage. Whatever may be the merits of the case, in our view, this is not an appropriate stage where the writ court should interfere and/or entertain the writ application when all the questions that are decided by the tribunal in the preliminary form or in the final form can be adjudicated after the award is passed and the aggrieved party comes up to the High Court. We are unable to appreciate the



arguments made by Mr. Sen that the decisions of the Cooper Engineering's case as well as of the Maheswari's case are only confined to the management and management only and the principles laid down therein have no application whatsoever in case the writ application is filed by the workman. One reason for which the Supreme Court had laid down the law was that such course of action would result delay in disposing of the industrial disputes. Delay may be caused by the management or by the workman and that in order to avoid delay and multiplicity of proceedings the matter should not be entertained at this stage but after the final award is made....”

14. The present issue has also been considered by this Court recently in W.P.(C) 2641/2016 titled as “***M/s Bennet Coleman & Co. Ltd. Vs. Ira Jha***” and in W.P.(C) 815/2020 titled “***Indian Bank & Anr. vs. Shri Praveen Kumar***”, whereby this court has reiterated and echoed the well settled proposition of law on the aforesaid issue. In ***M/s Bennett Coleman*** (supra), it was *inter alia* held as under;

“17. I am afraid that in view of the above discussion, the arguments advanced by the learned counsel of the petitioner/management cannot be accepted. The proposition of law as laid down in judgments of this court in Jai Narain Bansal’s case (supra) and M/S Ryan International School’s case (supra) hold ground as of now.

19. I consider that there is no reason to interfere with the order of learned Labour Court at this stage and do not find any substance in the contentions of the petitioner/management.

20. The petitioner/management should be at liberty to prove the charges against the respondent/workman before learned Labour Court in accordance with law. The learned Labour Court has already granted an opportunity to the petitioner/management to



lead the evidence. Merely because some of the witnesses of the petitioner/management are expressing their inability to appear for any reasons, the petitioner/management cannot be absolved of their duty to prove the charges against the respondent/workman.

21.This Court has not examined the merits of the case. Any expression made herein shall not tantamount to be an expression on the merits of the case. It will also be open to the petitioner to challenge the decision of the Labour Court regarding the preliminary issue after the final decision of the case through an appropriate court proceedings.”

15.In view of the above, the present petitions along with all pending applications are dismissed, accordingly.

DINESH KUMAR SHARMA, J

SEPTEMBER 9, 2022

Pallavi

न्यायमेव जयते