Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 17963 of 2023

Kalyani Concern Pvt. Limited & Anr.
Versus
State of West Bengal & Ors.

For the petitioners	:	Mr. P.B.Chowdhury Mr. S.K.Singh Mr. Ravi Kumar Dubey
For the respondent nos.3-6	:	Mr. Abhrajit Mitra, Sr. Adv. Mr. Shaunak Mitra Mr. Dripto Majumdar Mr. Bikash Shaw
For the State	:	Mr. Somnath Ganguli, Ld. AGP Mr. Balarko Sen
Heard on	:	09.08.2023
Judgment on	:	09.08.2023

Raja Basu Chowdhury, J:

1. The petitioners claim to be a shareholder of West Bengal Agro Textile Corporation Limited (hereinafter referred to as the "said Company"). The petitioners say that the Government of West Bengal is also having 26.06 per cent share in the said Company. The said company has a Jute Mill, namely, Bharat Jute Mills

which is situated at Makardha Road, Dasnagar, Howrah. According to the petitioners, the company had been functioning under the directorship of Mr. Manoj Kumar Taparia, Vinod Kumar Bagaria and Mr. Dev Bagaria.

2. It is the petitioners' case that on 24th February, 2023, the said Mr. Vinod Kumar Bagaria, the respondent no.3 herein, had illegally removed Mr. Manjoj Kumar Taparia from the directorship of the said Company and introduced two new persons as directors of the said Company. By reasons of the aforesaid illegal act, the petitioners were compelled to lodge an FIR. Unfortunately, according to the petitioners, the said Mr. Vinod Kumar Bagaria had stopped the operation of the bank account of Bharat Jute Mills maintained with the Axis Bank Ltd. and as a consequence thereof, the functioning of the Jute Mills came to a complete halt on and from 3rd April, 2023.

3. Regarding non-payment of wages to the workers and the functioning of the Jute Mills, a conciliation proceeding had been initiated by one of the operating unions, namely, National Federation of Jute Workers. To expedite the aforesaid proceeding, *inter alia*, including disbursement of arrear wages in favour of the workers, a writ petition was filed by the aforesaid union, which was registered as WPA 11544 of 2023. It is in connection with the aforesaid writ application, by an order dated 11th May, 2023, this Hon'ble Court taking note of the submissions of the learned

advocates for the parties, which also included the petitioners, granted liberty to the parties to approach the concerned Joint Labour Commissioner, to arrive at a settlement, if possible. It was, *inter alia*, further provided therein that in the event any such application is filed, the Joint Labour Commissioner shall organise a meeting within 15 days from the date of receipt of such application.

4. In terms of the aforesaid order, some of the parties to the said writ application having approached the conciliation officer, by a memo dated 14th July, 2023, the conciliation officer was, *inter alia*, pleased to invite the parties for a joint conference on 17th July, 2023. In terms of the said notice, a meeting was held on 17th July, 2023, as also on 24th July, 2023. As would appear from the minutes of the meeting held on 24th July, 2023, it was, *inter alia*, recorded as follows:-

> *"Both parties are present in today's discussion. Have discussions with them. After protracted discussions, both the unions and the management are agreed to the following points:*
>
> 1. *The mill shall resume production from 02.08.2023.*
> 2. *All kinds of preparatory works including maintenance work, restoration of electricity etc. will be completed by 02.08.2023 i.e., prior to production of the mill.*
> 3. *The management shall arrange to pay an amount as advance to their workmen after starting of production of the mill and within next salary date.*

> 4. *During discussions, the unions apprises the management about the dues of workers of the mill and both parties decide that a tripartite meeting will be held in this office of the Joint Labour Commissioner (P), Howrah within one month after starting production of the mill.*
> 5. *The management shall take all necessary with the ESIC Authority so that the workers can get all facilities under ESIC scheme from the very date of starting of production of the mill i.e., on and from 02.08.2023.*
> 6. *All other issues, if left, will be discussed and decided in the next tripartite meeting.*
> 7. *Both the management and the unions will cooperate each other for smooth running of the mill.*
> 8. *It is agreed that the workers will not interfere into the internal activities of the management.*
> 9. *It is agreed by both parties that the management will lift one truck finished good (64 to 65 bales) before 02.08.2023, if required."*

5. Being aggrieved with the failure on the part of the respondent no.2 to invite the petitioners for participating in the aforesaid conciliation process, and questioning the authority of the respondent nos. 3 to 6 to remove the finished products from the Jute Mill, the present writ application has been filed.

6. Mr. Chowdhury, learned advocate appearing for the petitioners, by drawing attention of this Court to the minutes of the meeting of the Extra-Ordinary General Meeting of the members of the said Company, held on 15th May, 2023, submits that in such meeting it had been resolved to appoint Mr. Krishna Murari Koyal, Mr.

Manoj Kumar Taparia and Ms. Jyoti Mohan Mall as directors of the said Company with immediate effect, and by the said resolution, it had also been resolved to remove Mr. Vinod Kumar Bagaria and Mr. Dev Bagaria, as directors of the said company.

7. By placing reliance on the provisions of Section 12 and Section 18 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act"), it is submitted that a Conciliation Officer is required to notify all interested parties to a dispute before arriving at a settlement. A settlement reached by way of conciliation is not only binding on the parties to the settlement but on all and sundry. As such no settlement could have taken place in absence of the petitioners. The least what was required of the respondent no.2, was to serve a notice of the conciliation proceeding on the petitioners, especially when the petitioners are not only the share holders but also the directors of the Company.

8. By drawing attention of this Court to the memo of the conciliation proceeding dated 14th July, 2023, it is submitted that Howrah Mills Co. Ltd., which is a share holder, had also been invited by the Conciliation Officer. Unfortunately, in the case of the petitioners, no such invitation had been forwarded. He submits that the respondent nos. 3 to 6 are clandestinely removing the finished products and unless appropriate protection is extended to the Company, the petitioners as also the workers shall suffer irreparable loss, injury and/or prejudice.

9. Mr. Chowdhury, by placing reliance on a judgment delivered in the case of ***Krishnarajendra Mills Workers Union v. Assistant Labour Commissioner and Conciliation Officer and Ors.***, reported in **ILR 1968 Mys 14**, submits that it is the duty of the Conciliation Officer to not only notify the parties to the dispute but to find out what the actual dispute between the parties is, and only on the basis thereof, to encourage the parties to enter into a fair and amicable settlement of the dispute.

10. It is submitted that since, a duty is casted on the Conciliation Officer to notify all interested parties, the least that was expected from the Conciliation Officer was a notice to participate in the conciliation proceeding. The same has not been done. This Hon'ble Court should issue necessary directions so as to permit the petitioners to participate in the aforesaid conciliation proceeding.

11. *Per contra,* Mr. Mitra, learned advocate appearing for the respondent nos. 3 to 6, on the other hand, by placing reliance on the Company Master Data, submits that the name of the petitioners do not appear as directors of the said Company. Challenging the aforesaid Master Data, a Company Petition being no. 136/KB/2023 has been field before the National Company Law Tribunal (in short, NCLT), Kolkata Bench by the petitioners. By drawing the attention of this Court to the reliefs, sought for in the said company petition, it is submitted that the petitioners are

only interested in taking charge of the management and affairs of the company and for such reason, want the Board of Directors of the Company to be superseded.

12. According to Mr. Mitra, if the petitioners were the directors of the Company, then there was no necessity for the petitioners to file the aforesaid company petition, which incidentally after conclusion of hearing, has now been reserved for judgment, as would appear from the order sheet of the NCLT dated 15th June, 2023. It is submitted that no interim order had been passed in favour of the petitioners in connection with the aforesaid company petition. What the petitioners could not achieve from the NCLT, they are trying to achieve, by filing the present writ application.

13. It is submitted that steps have already been taken for reopening of the Jute Mill. Workers' dues have been cleared to the extent of Rs.43,00,000/- up to March, 2023. The Jute Mill at present is operational. The petitioners have no right to represent the Company. No relief should be afforded in favour of the petitioners.

14. Mr. Ganguli, learned AGP appearing for the State, submits that the Jute Mill is already operational.

15. Heard the learned advocates appearing for the respective parties and considered the materials on record.

16. I find from the documents on record that a company petition, as regards the control of the management and affairs of the company is pending adjudication before the NCLT. Although, it has been strenuously argued by Mr. Chowdhury, by placing reliance on the minutes of the Extra-Ordinary General Meeting dated 15th May, 2023, that the respondent nos. 3 to 6 have been ousted and the petitioners have been appointed as directors of the said Company, the Company Master Data does not support such contention.

17. The right of the petitioners to participate in the conciliation proceedings, in my view, must depend upon the outcome of the company petition being CP no. 136/KB/2023. Independent of the above when the order dated 11th May, 2023, was passed in WPA 11544 of 2023, despite the petitioners being parties to such proceedings, no prayer was made by the petitioners to seek for leave to participate in the said conciliation process. Admittedly, the petitioners have also not applied before the Conciliation Officer seeking permission to participate in the conciliation process.

18. It is well settled that a judgment is an authority for what it decides and not, what can be logically deduced therefrom, a slight variation in facts may alter the final outcome. In the present facts, the case of ***Krishnarajendra Mills Workers Union*** (supra), does not come in aid of the petitioners.

19. In the conspectus of facts, as noted above, I am of the view that by reasons of the challenge thrown by the petitioners before the NCLT in CP no. 136/KB/2023, the right, if any, of the petitioners to participate in the conciliation, would depend upon the outcome of company petition being CP no. 136/KB/2023.

20. Having regard to the same, I am of the view that the petitioners are not entitled to any relief at this stage.

21. The writ application, therefore, fails and is accordingly ***dismissed*** without any order as to costs.

(*Raja Basu Chowdhury, J.*)

L A T E R

22. After the judgment is delivered, Mr. Chowdhury, learned advocate appearing for the petitioners, seeks leave to proceed before the NCLT to bring the factum of the Extra-Ordinary General Meeting as aforesaid to the notice of the NCLT.

23. In my view, no such leave is necessary, to approach the NCLT.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)