

23.04.2024
Sl. No.9
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1886 of 2024
with
IA No: CAN 1 of 2024

M/s. Jindal (India) Limited
Vs.
The State of West Bengal & Ors.

Mr. Ranjoy De,
Mr. B. Banerjee,
Mr. A. A. Bose,
Mr. Suvradal Choudhury

....for the petitioner.

Ms. Nimisha Agarwal

....for the respondent no.3.

The petitioner has challenged an award passed by the learned 2nd Industrial Tribunal, Kolkata by contending that the same is *ex parte*. The petitioner relies upon a judgment reported in 1980 (Supp) SCC 420 (Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and Others). In support of its contention by relying upon paragraph 10 of Grindlays Bank Ltd. (supra), it is contended by the petitioner that the Tribunal proceeded to make an award without notice to the petitioner and as such, the award is nothing but a nullity even though the Tribunal has such power under Section 11(1) of the Industrial Disputes Act, 1947 (in short "I. D. Act") and the rules

framed thereunder. The award, therefor, is required to set aside.

On a perusal of the petition and the annexures thereto, it is apparent that the petitioner filed its written statement on 16th September, 2022. After having filed the written statement it cannot be contended that the matter was proceeded *ex parte* as a matter can be said to be heard *ex parte* if no notice is at all served on the petitioner at any stage of the proceedings. The order dated 17th August, 2023 records that the said date was fixed for hearing argument *ex parte*.

It is the case of the writ petitioner as made out in paragraph 8 of the writ petition that on 16th August, 2023 the petitioner for first time came to know from the learned advocate representing the petitioner that he was suffering from conjunctivitis with effect from 26th July, 2023. Before recovery from conjunctivitis, the said advocate also stated suffering from high fever, cold and cough. Owing to health condition, the said learned advocate was in bedridden condition for about two weeks. Moreover, due to sensitivity to light, intense redness and blurred vision, the said learned advocate could not take any step before the learned Tribunal on 28th July, 2023. Although the said advocate recovered from cough and cold on 12th August, 2023, but owing to physical weakness, the

said advocate could not come to court till 15th August, 2023 and lastly on 16th August, 2023 at about 3.10 p.m. he entered at the learned Tribunal in order to collect the next date of hearing but found that time the matter was already posted on 17th August, 2023 for *ex parte* hearing.

This statement in paragraph 8 is verified to be true to the knowledge of the deponent who claims to be an authorised signatory of the petitioner and not the advocate concerned. The statement is also not backed by any document. In any event prior to 17th August, 2023 when the matter was fixed for *ex parte* argument the learned advocate and the petitioner had become aware that the matter has been fixed for *ex parte* argument on 17th August, 2023. It is apparent from the order dated 17th August, 2023 that neither the said advocate nor any representative of the petitioner-company appeared or took any step before the Tribunal on 17th August, 2023.

The case made out by the writ petitioner, to contend that the award was *ex parte* and being a nullity should be set aside, is not acceptable to this Court for the reasons as aforesaid. Although there is no quarrel as to the proposition laid down in Grindlays Bank Ltd. (*supra*) but in the facts of the instant case, the said ratio is not applicable.

The writ petition accordingly fails and is dismissed.

In Re: CAN 1 of 2024

The respondent-workman has filed an application, being CAN 1 of 2024, inter alia under the provisions of Section 17B of the Industrial Disputes Act, 1947 (in short, "I. D. Act") as the employer (writ petitioner) had challenged the award. Since the writ petition is dismissed, no order is required to be made in the said application.

The respondent no.3 (employee) shall be free to take necessary steps before the appropriate authority in accordance with law.

CAN 1 of 2024 is disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)