

30.07.2024
Court No.13
Item No.71
AP

**FMA 474 of 2024
With
IA NO: CAN 1 of 2024**

**M/s. Cannon Electronic Systems
Vs.
The State of West Bengal and Ors.**

Mr. Pradip Kumar Tarafder
Mr. Sourav Sengupta

... for the Appellant.

Mr. Himadri Sikhar Chakraborty
Ms. Susnita Saha

... for the State.

Mr. Rananeesh Guha Thakurata
Ms. Senjuti Sengupta
Ms. Dipa Roy

... for the Respondent No.3.

1. The appellant employer challenges a judgment and/or order dated 15th January, 2024 passed by the Single Bench of this Court in WPA 20201 of 1998 (M/s. Canon Electronics Systems Vs. The State of West Bengal & Ors.).

2. The brief facts relevant to the instant case are as follows:-

3. The workman, Basudeb Basak, was appointed as a Junior Sales Executive with the appellant on 16th September, 1991. It was found that he failed to achieve his targets and was not allotted any work and made to sit idle.

4. Conciliation proceedings were initiated, which failed. The State thereafter referred an Industrial Dispute for adjudication to the 1st Industrial Tribunal. The two points of references were (i) Is the termination of the service of Basudeb Basak justified? (ii) What relief is he entitled?

5. The workman through the Union filed a claim petition before the Tribunal. The appellant filed its written statement and entered appearance. The workman concerned deposed before the Tribunal-in-Chief he was cross-examined by the appellant company. The appellant tendered a witness Ashit Kr. Roy, who was examined and also cross-examined on 13th March, 1997 and 15th December, 1997.

6. The appellant thereafter filed an application on 9th January, 1998 for recall of its witness, Ashit Kr. Roy. The hearing of the application was adjourned from time to time for absence of the regular presiding officer. The application is finally taken up on 22nd May, 1998 and the Tribunal found that the application for recall of the witness filed by the company to be vague and devoid of merit and dismissed it.

7. It appears from the records that the company/appellant was not represented on 22nd May, 1998. It is not clear from the order sheet whether the

company was at all represented after 27th February, 1998.

8. Be that as it may, after rejection of the application for recall filed by the appellant, the evidence was closed by the Tribunal on 12th June, 1998 and the matter was fixed for arguments on 17th July, 1998.

9. The appellant was continuously absent on 22nd May, 1998, 12th June, 1998 and 17th July, 1998 and on the date of the award i.e. on 21st July, 1998. The award was published on 25th August, 1998.

10. The appellant filed an application for recall of the ex parte award on 24th September, 1998. There is not even an iota of explanation in the application before the Tribunal as to the exact reason why the writ petitioner was not represented before the Tribunal between 22nd May, 1998 till 21st July, 1998.

11. There is a feeble reference in the application for recall that the advocate representing the appellant did not notify the appellant that he was not going to represent it and hence, the company did not getting an opportunity to make an alternative arrangement.

12. The Single Bench found the conduct of the appellant in this regard rather reprehensible. Allegations have been made against the advocate of

the company but no attempt was made to serve a copy of the application for recall of the ex parte award or the writ petition on the said learned advocate.

13. The Supreme Court and this Court in several cases deprecated the conduct of the parties in blaming advocates for their lapses without making them parties to such proceedings.

14. In any event, the reference is against the company. The litigation was that of the company. The appellant has not averred in its application for recall before the Tribunal or in the writ petition or in the CAN application before this Court as to what steps they have taken to contact their advocates and whether their advocate, in fact, did not cooperate to them at all.

15. In the backdrop of the above facts, this Court is unable to see any bona fides on the part of the appellant. The Single Bench in the impugned order was of the same view.

16. Learned counsel for the appellant placed reliance upon the decision of the Supreme Court in the case of **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Ors.** reported in **1980 (Supp) Supreme Court Cases 420.**

17. In the said case the Supreme Court while holding that under Section 11 of the Industrial Disputes (Central) Rules, 1957 read with Rules 22 and 24 thereof (Rule 22 being pari material with the West Bengal Industrial Disputes Rules 1958) as held that the principles of natural justice would have to be followed strictly by the Tribunals notwithstanding the fact that they are entitled set their own procedure.

18. In the case of **Grindlays Bank Ltd. (supra)** the notice of peremptory hearing of the reference made by the Central Government was given to the parties but the matter was adjourned from time to time. Eventually, hearing was fixed on 9th December, 1976. On the said date counsel on behalf of the employees association applied for adjournment for the reasons stated therein. Such application was rejected and award was pronounced ex parte.

19. On a subsequent application by the employees union for recall of the ex parte order, the Tribunal recalled the same. It is this order of recalling of ex parte order that came to be questioned before the Supreme Court after the High Court had held that the Tribunal could not recall its ex parte order since it has become fructuous officio.

20. While upholding the order of recall by the Tribunal, the Supreme Court went on to pronounce

upon the scope of Rule 11, 22 and 24 of the Industrial Disputes (Central) Rules, 1957 and the provisions of Order 9 Rule 13 of the Code of Civil Procedure.

21. The said decision would have no manner of application to the facts of the instant case.

22. The other decisions relied upon by the appellant are **Anil Sood Vs. Presiding Officer, Labour Court II** reported in **(2001) 10 Supreme Court Cases 534**, **Radhakrishna Mani Tripathi Vs. L.H. Patel and Anr.** reported in **(2009) 2 Supreme Court Cases 81** and **Mahabir Prosad Choudhury Vs. Octavius Tea & Industries Ltd. & Ors.** reported in **2009 SCC OnLine Cal 2702**, have been distinguished very rightly and correctly by the Single Bench.

23. In the backdrop of the above, the arguments of learned counsel for the appellant that the Tribunal was duty bound to issue a show cause in terms of Rule 20 of the West Bengal Industrial Disputes Rules, 1958 is completely misplaced and cannot be accepted. The appellant not only participated in the proceedings in the Tribunal, examined a witness, sought recall of the said witness and thereafter abandoned the proceedings. This Court, therefore, cannot find fault with the Tribunal proceeding to deliver the award ex parte.

24. In the backdrop of the above, no interference is called for with the impugned judgment and/or order.

25. Accordingly, FMA 474 of 2024 fails and hereby dismissed.

26. In view of the dismissal of the FMA 474 of 2024, all connected pending applications, if any, shall also stand dismissed.

27. There shall be no order as to costs.

28. Let the LCR, if any, be sent back to the Court below.

29. Registry shall communicate this order to the Court below.

30. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Apurba Sinha Ray, J.)