

19.09.2024
Court No.13
Item No.96
AP

**FMA 825 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024**

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

Mr. Ranajoy Dey
Mr. Suvradal Choudhury

... For the Appellant.

Ms. Nimisha Agarwal

... For the Respondent No.3.

1. The instant appeal is directed against a judgment and/or order dated 23rd April, 2024 passed by a Single Bench of this Court in WPA 1886 of 2024. By the impugned judgment the Single Bench refused to set aside an ex parte award dated 24th August, 2023 passed by the learned Second Industrial Tribunal at Kolkata.

2. It appears from the records of the proceedings before the Second Industrial Tribunal that since after filling the written statement against the reference, the appellant's management was negligent and absent continuously. An order was passed by this High Court on 28th June, 2023 in WPA 9847 of 2023 directing that the Tribunal should dispose of the reference within a period of six months from the date of communication of a copy of the order.

3. The company was not represented on 7th July, 2023, when the order was discussed by the Tribunal. They were not present on the next day i.e. 28th July, 2023. They also remained absent on the day thereafter i.e. 16th August, 2023 when the employee was examined as PW 1 and witness closed.

4. On 17th August, 2023 an application for recall of the closure of the evidence in the reference was made. The ground for nonappearance was that the advocate for the company was not well. Not a shred of medical evidence was produced before the Tribunal. Despite whereof the appellant/company was asked to pay a sum of Rs.25,000/- as costs for the purpose of recall of the earlier order of closing evidence.

5. What, however, strikes to this Court as slightly unfair was that the costs of Rs.25,000/- was directed to be paid on the same day. Upon failure of the appellant to pay costs on 17th August, 2023, the Tribunal by Order No.29 dated 24th August, 2023 passed the impugned award. It does not appear that any attempt was made by the company to at least tender costs of Rs.25,000/- to the employee between 17th August, 2023 and 24th August, 2023.

6. To say the least, the conduct of the company is reprehensible. The impugned ex parte award dated 24th

August, 2023 and the impugned order of the Single Bench dated 23rd April, 2024 would not have called for any interference whatsoever. The Single Bench has rightly held that the decision of the Supreme Court in the case of **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Ors.** reported in **1980 (Supp) SCC 420** is not applicable in the facts of the case.

7. This Court, however, in the interest of justice is of the view that upon appropriate compensation in the form of costs to the employee being ordered, the company may be given a chance to defend the reference before the Tribunal.

8. In the above circumstances, this Court directs the appellant/company to pay costs assessed at Rs.5,00,000/- to the employee's bank account mandatorily and positively by the end of the working day of Saturday i.e. 21st September, 2024 or before.

9. If such payment is made, the impugned ex parte order shall stand set aside and the matter shall proceed before the Second Industrial Tribunal from the stage of cross-examination of PW 1.

10. The Tribunal is requested to fix a date preferably within a period of ten days from 23rd September, 2024.

The reference shall thereafter proceed, if possible, on a day to day basis or in very short intervals. No adjournment whatsoever shall be granted to any parties. The Tribunal is requested to dispose of the reference within a period of three months from date, if not earlier. The aforesaid directions are mandatory.

11. It is made clear that in default of payment of costs of Rs.5,00,000/- by the appellant to the employee as indicated above, the appeal shall stand automatically dismissed and the ex parte award dated 24th August, 2023 shall automatically revived and become executable.

12. With the aforesaid observations, the appeal is disposed of.

13. In view of the disposal of the main appeal, CAN 1 of 2024 and CAN 2 of 2024 are also disposed of.

14. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)