

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 20201 of 1998

**M/s. Canon Electronics Systems
Versus
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Pradip Kumar Tarafder Mr. Sourav Sengupta
For the respondent no. 3	:	Mr. Rananeesh Guha Thakurta Ms. Senjuti Sengupta Ms. Dipa Roy
Heard on	:	15.01.2024
Judgment on	:	15th January, 2024

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the award dated 21st July, 1988 passed by the learned First Industrial Tribunal, West Bengal.
2. Shorn of unnecessary details, the facts are that one Mr. Basudeb Basak was an employee of the writ petitioner (hereinafter referred to as the “workman”). The factum of appointment of the workman with the petitioner would corroborate from the letter of appointment dated 16th

September, 1991. Subsequently, the petitioner by issuing a letter of confirmation dated 1st December, 1991, confirmed the services of the workman. Incidentally, by a communication in writing dated 3rd October, 1992 the petitioner informed the workman that he had been able to achieve business of Rs. 285 in the month of September, 1992 and his deficiency has crossed over Rs.60000. It was further observed in such communication that in the event the said workman fails to cover up the total deficiency there shall be no alternative but to discontinue him from the service of the organisation.

3. Later in the year 1993, since, the said workman was kept idle, the respondent no. 3 alleging unfair labour practice by a communication dated 19th April, 1993, which was addressed to the Marketing Manager of the petitioner, had called upon him to restore the normal duties of the workman.
4. Notwithstanding the aforesaid, since, the workman was kept idle without being entrusted any work from 31st October, 1992, the respondent no. 3 by a communication in writing dated 14th May, 1993 sought for the intervention of the office of the Assistant Labour Commissioner, West Bengal. Although, a conciliation proceeding was initiated by the office of the Assistant Labour Commissioner, West Bengal, such conciliation having failed, the appropriate Government by an order dated 8th December, 1993 was, *inter alia*, pleased to refer the aforesaid

disputes to the learned First Industrial Tribunal by, *inter alia*, framing the following issues: -

- “1) Is the termination of services of Sri Basudev Basak justified?
- 2) To what relief, if any is he entitled? ”

5. In terms of the aforesaid reference, not only did the respondent no. 3 file its claim petition/written statement but the petitioner also entered appearance and filed its written statement before the learned Tribunal. The matter, thereafter, proceeded on contest. The respondent no. 3 had initially led oral evidence through the workman concerned. The workman was also cross-examined by the petitioner.
6. Subsequently, after conclusion of the oral testimony of the workman, one Sri Ashit Kr. Roy was examined on behalf of the petitioner on 13th March, 1997 as its witness. Later, he was also cross-examined not only on 13th March, 1997 but also on 15th December, 1997. The cross-examination of the petitioner's witnesses was concluded on 15th December, 1997.
7. The petitioner had later filed an application for recall of its witness Sri Ashit Kr. Roy, on the grounds stated in such application. The said application for recall of witness was filed on 9th January, 1998. Final Hearing of such application could not proceed at least until 24th April, 1998 since, the Presiding Officer was not available. On 22nd May, 1998 as would reflect from the order no. 61, the learned Tribunal was, *inter alia*,

pleased to reject the said application observing that the same was vague and that on the basis of the written objection filed by the petitioner, the C.W.1, Sri Ashit Kr. Roy had already been examined in full.

8. Incidentally, on the next date i.e. on 17th July, 1998 the petitioner again failed to appear. The respondent no. 3 was, however, present before the Tribunal and had advanced arguments. The matter was adjourned and fixed for passing award on 21st July, 1998. On 21st July, 1998 an *ex parte* award was passed. It is only after passing of the aforesaid *ex parte* award, the petitioner had applied for recall of the said *ex parte* award. The verification in the application for recall was signed by the petitioner's first witness Ashit Kr. Roy on 24th September, 1988.
9. By an order dated 25th September, 1998, the learned Tribunal was pleased to dismiss the said application, *inter alia*, on the ground that the said application having been made after expiry of two months, the learned Tribunal had no jurisdiction to entertain the same.
10. Challenging not only the *ex parte* award passed by the learned Tribunal but the order refusing to recall the *ex parte* award, the instant writ petition has been filed.
11. Mr. Tarafder, learned advocate representing the petitioner, submits that in the instant case, the petitioner had

no notice of hearing. The learned Tribunal was obliged before proceeding *ex parte* to issue a show-cause on the petitioner. In absence of such show-cause and notice of hearing, the award passed by the learned Tribunal stands vitiated and is a nullity. The award was passed without complying with the statutory provisions, *inter alia*, including the West Bengal Industrial Disputes Rules, 1958 (hereinafter referred to as the “said Rules”). By drawing attention of the Court to Rule 21 of the said Rules, he submits that the learned Tribunal was under an obligation to notify the petitioner prior to passing of the *ex parte* award. In support of his aforesaid contention, he has placed reliance on the following judgments:

- i) ***Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors.***, reported in **1980 (supp) Supreme Court Cases 420**;
- ii) ***Anil Sood v. Presiding Officer, Labour Court II***, reported in **(2001) 10 SCC 534**;
- iii) ***Hindustan Motors Ltd. v. Ld. Fifth Industrial Tribunal, W.B. & Ors.***, passed by this Hon’ble Court in **WP No. 1242 of 2007**.

12. In the given facts, it was submitted that the award cannot be sustained. The same should be set aside and the matter should be remanded back to the Tribunal.

13. *Per contra*, Mr. Guhathakurta, learned advocate representing the respondent no. 3, submits that the only case argued by the petitioner is with regard to the petitioner having no notice of the proceeding, and the non-compliance of the said Rules in that regard. He submits, the petitioner was not only aware with regard to the factum of the order of reference but pursuant to summons being issued by the learned First Industrial Tribunal, had caused its appearance and had also filed its written statement. By drawing attention of this Court to page 56 part III of the paper book, it is submitted that since, the petitioner had initially failed to appear before the learned Tribunal, a show-cause notice was issued, as such it cannot be said that the petitioner had no notice of the proceedings. By placing reliance on Rules 20B(1) and 20B(5) of the said Rules, it is submitted that the statute provides for the mode and manner in which the summons and a notice shall be issued. In this case, not only the summons was served but the notice of the proceedings was also served on the petitioner.

14. Having regard to the aforesaid, it is submitted that there is no irregularity on the part of the learned Tribunal in passing the award or the orders impugned. If the petitioner had chosen not to appear before the learned Tribunal, the learned Tribunal cannot be made responsible therefor. He submits that in the given facts, no interference is called for in this case.

15. I have heard the learned advocates appearing for the respective parties and considered the materials on record. From the pleadings of the parties and the extent of arguments advanced by the learned advocates, the following issues emerge:-

- i) Whether, the petitioner had due notice of the proceeding prior to passing of the award;
- ii) Whether, the learned Tribunal prior to passing the award was obliged to issue show-cause on the petitioner.

16. Admittedly, from the pleadings and the facts narrated hereinabove, it would be apparent and clear that the petitioner not only had notice of such proceeding but had also filed its written statement. As such the tall claim made by the petitioner that it had no notice at all, is without any basis. The first issue is, thus, decided against the petitioner and in favour of the respondent no.3.

17. What is, however, relevant is whether the learned Tribunal was obliged to serve a fresh notice on the petitioner prior to passing the said *ex parte* order/award. It may be noted here that although, the petitioner had been contesting the matter, after conclusion of the oral testimony of its only witness Sri Ashit Kumar Roy, an application was filed for recall of the said witness. The said application for recall, however, runs into

three paragraphs. To morefully appreciate the purport of such application, the relevant paragraphs and the prayer made in the aforesaid application is extracted hereinbelow: -

“1. That the above case is fixed today i.e. 9.01.98 for company’s further evidence.

2. That the above named company wants to recall C.W.1 Sri Ashit Kumar Roy for further evidence on the basis of the Written Objection filed by the abovenamed company in paras – 4, 8, 9 and 10 for the ends of justice.

3. That the instant application has been bonafide.

It is therefore humbly prayed that your Honour will graciously be pleased to recall C.W.1, Sri Ashit Kumar Roy for further evidence on the points already mentioned in the above paragraph or pass any other order or orders as Your Honour may deem fit and proper for the interest of justice.”

18. As noted hereinabove, the said application though filed on 9th January, 1998 could not be taken up for consideration at least upto 24th April, 1998 since, the Presiding Officer was not available. On 22nd May, 1998 though, the learned advocate for the respondent no. 3 was present, the petitioner was not represented. The said application was, thus, decided *ex parte* in

absence of the petitioner, on merits. The learned Tribunal upon examining the contents of the application and the grounds based on which recall of the witness was sought for, having found that the application was vague and that the said witness had been examined in full on the basis of the written objection, had concluded that there cannot be further examination of the witness. The application was thus, dismissed. Although, no challenge has been made on the merits of the order of dismissal, I have examined the said application and have found that the said application is vague. No grounds for recall of the witness had been identified. There was nothing new, which was introduced by the respondent no. 3 for recall of the petitioner's witness. The aforesaid order does not require interference.

19. Records, however, reveal that after dismissal of the application for recall, the matter was adjourned to the next date so as to enable further examination of any other witness by the petitioner. The petitioner, however, chose not to appear on the following date i.e. on 12th June, 1998, when the matter had been taken up. Obviously, in absence of any further witness and in absence of the petitioner being represented, the learned Tribunal was, *inter alia*, pleased to declare that the evidence is closed. No further hearing took place on that date and the matter was adjourned to 17th July, 1998 and was fixed for arguments.

20. On 17th July, 1998, the petitioner again chose not to appear. Since, the respondent no. 3 was represented, after hearing the said respondent, the learned Tribunal postponed passing of the award till the next date i.e. 21st July, 1998. On the date fixed above, i.e. on 21st July, 1998, the *ex parte* award was dictated in open court. On that date as well, the petitioner was not represented.

21. Subsequently, a belated application for recall of the *ex parte* award was filed which was verified by the petitioner's witness Sri Ashit Kumar Roy on 24th September, 1998. The learned Tribunal had, however, refused to recall the said award, as the same was filed after expiry of two months.

22. I have examined the averments made in the application for recall of the award dated 21st July, 1998. It would be apparent and clear that the petitioner had notice of the case as has been stated by the petitioner in paragraph 13 of the application for recall of the award, wherein it has been claimed that the learned advocate representing the petitioner had not informed the petitioner of his non-appearance or his unwillingness to act on behalf of the petitioner, for the petitioner to make alternative arrangement. It has been further stated in the said paragraph that on account of his negligence/default, the petitioner had suffered, resulting in passing of the *ex parte* award. Incidentally, no arguments were advanced with regard to

the negligence of the advocate representing the petitioner. Even, while making such allegations in the pleadings of the present case, the petitioner chose not to notify the learned advocate who had represented the petitioner before the learned Tribunal. No leave has also been sought for on behalf of the petitioner to serve a notice of this writ petition on the learned advocate representing the petitioner before the learned Tribunal. It is too well-settled that an advocate is an agent of the party. The petitioner cannot be permitted to make such wild allegations against his own advocate without affording his advocate an opportunity to explain.

23. Further, contrary to the arguments advanced, a perusal of the statements made in the aforesaid application for recall of the award would reveal that the petitioner's failure to take steps before the Tribunal had been attempted to be passed off as a failure of the learned Tribunal to serve notice. It must be noted here that unlike a proceeding pending before High Court in writ jurisdiction or a Civil Court in appellate jurisdiction since, the learned Tribunal was exercising original jurisdiction, the petitioner was obliged to explain as to what prevented the petitioner from causing appearance on the dates when the matter was taken up *ex parte* by the learned Tribunal. The statements made in application for recalling of the *ex parte* award in my view do not make out sufficient cause for

petitioner's non-appearance. There is no explanation as to why the petitioner's representative was not present before the learned Tribunal on the dates when the matter was called on or, whether any attempt was made by the petitioner to contact its advocate.

24. Having regard to the facts narrated hereinabove and taking note of the factum of the petitioner having notice of the proceeding, I am of the view that the learned Tribunal was under no obligation to issue any further notice or show cause. The second issue is answered accordingly.

25. The judgment relied on by the petitioner in the case of **Grindlays Bank Ltd.** (*supra*) does not deal with a similar situation nor is the same an authority for the proposition that it is the obligation of the learned Tribunal to repeatedly issue notices to a party who otherwise has notice of proceeding.

26. The case of **Anil Sood** (*supra*) deals with the procedural aspect and the power to enquire whether or not sufficient cause is shown. Since, the petitioner otherwise had notice of the proceeding, the aforesaid judgment and the judgment delivered by the Division Bench of this Court in the case of **Mahabir Prosad Choudhury** (*supra*), which deals with a situation where the party was not even served with a copy of the written statement, does not assist the petitioner at all. Further I have already noted above that the petitioner has failed to make out a

case of sufficient cause for its non-appearance. Lastly, in the case of ***Hindustan Motors Ltd.*** (*supra*), the Coordinate Bench of this Court had by taking note of the provision of Rule 20B(5) of the said Rules and the non-service of the written statement filed by the workmen on the employer had interfered in the matter. The above judgment also does not assist the petitioner. It is well settled that a judgment is an authority for what it decides and not what can be logically deduced therefrom.

27. The award is a well reason award and has been passed upon considering the materials available on record. No attempt has been made to challenge the award on merits. There appears to be no infraction in the Rules, for the aforesaid award to be rendered nullity or for the same to be vitiated.

28. The petitioner has also not been able to identify any irregularity far less a jurisdictional error committed by the learned Tribunal. Taking an overall view of the matter, and also noting that the workman concerned has reached the age of superannuated, I am of the view that no interference is called for.

29. The writ petition is accordingly, dismissed.

30. There shall be no order as to costs.

31. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)

Kaushik