

30.08.2024
Item No.02
Court No.11
Avijit Mitra

WP.CT 244 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Tarun Kumar Dey & anr.

- Versus -

Union of India & ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Samim Ahammed,
Ms. Ambiya Khatun,
Mr. Enamul Haque

...for the petitioners

Mr. R.N. Bag,
Mr. Samrat Ghosh,
Ms. Sharmila Datta Das

...for the respondents

Mr. Partha Sarathi Sengupta, Sr. Adv.,
Mr. Lakshmi Kanta Pal

...for the respondent nos. 2 & 4

Records reveal that an original application (in short, OA) being OA 855 of 2024 was preferred by two non-executive employees of the Durgapur Steel Plant (in short, DSP) primarily praying for a direction upon the respondents to immediately cease and desist from further implementation of the Biometric Attendance Management (in short, BAM) System at DSP. The OA was heard on 2nd July, 2024 when the learned Tribunal directed the parties to exchange their reply and rejoinder. The matter thereafter appeared on 12th August, 2024 and was adjourned to 11th November, 2024. In the midst thereof, on behalf of DSP a circular was issued on 14th August, 2024 stating *inter alia*

that *'it is for information of all concerned that from 01/09/2024 onwards, login to BAMS portal shall only be available to the employees who have enrolled in the system'* and a further notice was issued directing the employees to get themselves enrolled in the BAM System.

Drawing our attention to the provisions of the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (in short, 2011 Rules), Mr. Bhattacharya, learned senior advocate, assisted by Mr. Ahammed, learned advocate appearing on behalf of the petitioners submits that the DSP authorities had unilaterally taken steps towards implementation of the BAM System without the requisite consent of the petitioners. The recording of the biometrics would result in disclosure of sensitive personal data or information and the same would severely prejudice their privacy rights and would be violative of the provisions of Article 21 of the Constitution of India. In view thereof, the respondents need to be restrained from implementation of the BAM System. Such argument, as advanced, was glossed over by the learned Tribunal and no *interim* protection was granted.

Mr. Bag, learned advocate enters appearance on behalf of the Union of India.

Mr. Sengupta, learned senior advocate, assisted by Mr. Pal, learned advocate appearing for the respondent nos.2 and 4, however, denies and disputes the contention

of Mr. Bhattacharyya and submits that all the executive employees have consented and have enrolled themselves in the BAM System. Most of the non-executive employees have also given consent and have enrolled themselves in the BAM System.

Mr. Sengupta further submits that the provisions of the 2011 Rules are not applicable to the respondents and prior to final determination of the said issue, the respondents cannot be restrained from implementing the BAM System which is essential for smooth administration.

Answering our query, Mr. Sengupta submits that the personal data or information of the employees, who get themselves enrolled in the BAM System would not be disclosed to any other individual or the governments, i.e., the Central Government and the State Government.

In the said conspectus and since *prima facie* an arguable case has been made out by the petitioners, we direct that the respondents would be at liberty to implement the recording of attendance of non-executive employees through the BAM System, however, the respondents shall not disclose the personal data or information of the employees enrolled in the BAM System to any other individual or the governments, i.e., the Central Government and the State Government, without the leave of the learned Tribunal.

Mr. Sengupta has informed us that the reply to the OA has already been prepared and the same will be served

upon the learned advocate, who had entered appearance on behalf of the petitioners before the learned Tribunal within a week from date. Rejoinder, if any, be filed within two weeks thereafter.

As the next date of hearing before the learned Tribunal has already been fixed on 11th November, 2024, we would request the learned Tribunal to make a sincere endeavour to finally decide the matter on the returnable date or within six weeks thereafter, without granting any unnecessary adjournment to either of the parties.

With the above observations and directions, the present writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)