

[ASSIGNED]

W.P.A. 30057 of 2024

**ITD Cementation Ltd.
Vs.
The State of West Bengal & Ors.**

Mr. Ranjay De, Sr. Adv
Mr. Basabjit Banerjee
Mr. Adityajit Abel Bose
...for the Petitioner

Mr. Somnath Ganguly, AGP
Ms. Sangeeta Roy
...for the State

Ms. Senjuti Sengupta
Mr. R. Guha Thakurta
Mr. Pulin Ch. Maity
...for Respondent No.3

Matter is heard at length in presence of the learned advocates representing the parties.

By presenting this writ petition, *inter alia*, petitioner has questioned order dated 28th October, 2024 passed by the 2nd Industrial Tribunal, Kolkata in Case No.15 of 2019 under Section 2A(2) of the Industrial Disputes Act, 1947. By the order dated 28th October, 2024 application of the petitioner being O.P. before the Tribunal dated 29th July, 2024 as taken out in terms of Section 11 of Industrial Disputes Act, 1947 read with Rule 15 of the West Bengal Industrial Disputes Rules, 1958 (hereinafter referred to as the ‘said Rules’) was rejected. In the said application dated 29th July, 2024, O.P. before the Tribunal prayed for certain documents to be taken in evidence at the later stage of the proceeding to testify the facts which are narrated in paragraph 4 of the said application.

Tribunal while rejecting the application of the O.P. dated 29th July, 2024 assigned two reasons – firstly, in consideration of the averments made in paragraph 4 of the application, Tribunal discarded the plea of the O.P. to permit to use documents being annexure-V to annexure-Y to be taken as evidence. However, at the relevant part of the impugned order, Tribunal while considering the acceptability of the documents described in paragraph 3 of the application, did not make any adverse observation with regard to the plea of the O.P. to take other documents being annexure-A to annexure-U as evidence. Secondly, in the last part of the impugned order taking note of Rule 15 of the said Rules and delay occurred in approaching the Tribunal by the O.P. with the application under Rule 15, the Tribunal rejected the plea of the O.P. to lead evidence based on all the documents as described in paragraph 3 of the application being Annexure-A to Annexure-Y and cost was imposed.

Comparing the aforesaid two reasons assigned in two parts of the impugned order dated 28th October, 2024 of the Tribunal, it transpires that in first part there was rejection to take Annexure-V to Annexure-Y as evidence but in the last part prayer of the O.P. to permit the company to use all the annexures as per paragraph 3 as evidence was refused and to that extent there is a dichotomy.

During course of hearing, question arises for consideration whether after the time stipulated under Rule 20C of the said Rules, it is permissible so far O.P. is concerned to take out an application under Rule 15 of the said Rules at the later stage of the proceeding for using certain documents as evidence.

In order to answer such query, Mr. De, learned Senior Advocate representing the writ petitioner/ O.P. has placed before this Court a judgment of the Hon'ble Supreme Court reported in **(2005) 2 SCC 684 (Divyash Pandit v. Management, NCCBM)** and a judgment of a co-ordinate bench of this Court reported in **2005 SCC OnLine Cal 315 (National Textile Corporation (WBAB & O) Limited Unit: Arati Cotton Mills v. Learned Second Industrial Tribunal, West Bengal & Anr.)**.

In paragraph 8 of **Divyash Pandit (supra)** it has been unequivocally observed by the Hon'ble Supreme Court that respondent may not have made any prayer for additional evidence in its written statement but taking note of the observation made in *Karnataka SRTC v. Laxmidevamma* this did not place fetter on the powers of the Court/ Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. What is important to note herein that the Hon'ble Supreme Court has held that at any stage of proceedings before

they are concluded parties can lead additional evidence including production of document.

Such observation was followed by the co-ordinate bench in ***National Textile Corporation (supra)*** in paragraph 9. It is also observed therein that the power conferred upon the Tribunal should be exercised judiciously and not mechanically. The case which was considered by the co-ordinate bench was also based on the fact that there was no satisfactory explanation as to why failure of the party to produce documents at the discovery stage and as a result whereof discretion was not exercised and the petition was rejected by the Tribunal.

Delay in approaching the Tribunal with the application dated 29th July, 2024 and absence of pleadings are the reasons in the present case to reject the application of the O.P. But placing reliance on the observations made by the Hon'ble Supreme Court in ***Divyash Pandit (supra)*** and the observation of the co-ordinate bench in paragraph 9 of ***National Textile Corporation (supra)***, this Court finds it is apt to allow the application dated 29th July, 2024 taken out by the O.P. before the Tribunal permitting the O.P. to lead evidence based on those documents as described in paragraph 3 of the said application.

It needs to be stated herein that Tribunal may have misread the averments made in paragraph 4 of the application dated 29th July, 2024 and has held that according to O.P., documents being annexure-V to annexure-Y are not required in evidence but on careful reading of paragraph 4, it transpires that it is averred other documents in between annexure-A to annexure-U are also essentially required as those documents testify that the vendors/ customers/ suppliers used to place their quotation either to the company or to Shri Majumder and accordingly used to interact with him. Such averment should not lead the adjudicating authority to arrive at a conclusion that the documents being Annexure-V to Annexure-Y as mentioned in paragraph 3 are not required in evidence.

In view of aforesaid discussion, the impugned order dated 28th October, 2024 stands set aside. Writ petitioner/ O.P. shall be permitted to testify the relevant facts before the Tribunal based on evidence including the documents as described in paragraph 3 of the said application.

Order passed by the Tribunal based on the order dated 28th October, 2024, if any, is also set aside.

The Tribunal is requested to conclude the proceedings at an early date.

With the above observations, writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)