

CALCUTTA HIGH COURT

United Commercial Bank Ltd

Vs.

Kartar Singh Campbellpuri

Civil Revn. No. 1801 of 1951

(Bose, J.)

01.05.1952

JUDGMENT

Bose, J.

1. This is an application under Article 226 of the Constitution for an appropriate Writ for quashing of an order of an Industrial Tribunal dated 19-5-1951 whereby the petitioner has been directed to pay certain costs and expenses incurred by an employee of the petitioner in connection with certain proceedings before the Industrial Tribunal at Dehra-Dun.
2. The petitioner is a company incorporated under the Indian Companies Act having its registered office at Delhi and its head office at 2 Royal Exchange Place, Calcutta. The respondent is the Chairman, Central Government Industrial Tribunal, Calcutta, having his office at 20/1, Gurusaday Dutt Road, Ballygunge, Calcutta within the jurisdiction of this Court.
3. The case of the petitioner is that one A.C. Kakkar is an employee of the petitioner and Mr. Kakkar represented the employees of several other banks in certain proceedings in connection with industrial disputes between those banks and their employees before the respondent, sitting as Chairman of the Central Government Industrial Tribunal at Dehra Dun between 7-5-1951 and 19-5-1951. Neither the petitioner Bank nor its employees were parties to any of the disputes or proceedings dealt with by the respondent at the sitting of the Tribunal at Dehra Dun, nor did Mr. Kakkar attend the proceedings in his capacity as representative of the employees of the petitioner Bank. At the conclusion of the proceedings the respondent by an order made on 19-5-1951 directed that the Union representatives should be paid by the respective banks of which they were employees, single second class fare both ways from their place of duty to Dehra Dun and back and diem allowance at the rate of Rs. 5 per day for the days they attended at Dehra Dun. The petitioner was directed to pay the expenses incurred by Mr. Kakkar. The order was made without hearing the petitioner bank which was not a party to the proceedings in which the order was

made. The petitioner submits that the Banks which were parties to the proceedings at Dehra Dun and the cause of whose employees the said Mr. Kakkar was representing in those proceedings should bear the costs and expenses of Mr. Kakkar and the petitioner Bank which was not a party to any of the proceedings at Dehra Dan should not be made liable to pay the costs and expenses incurred by Mr. Kakkar in connection with the said proceedings at Dehra Dan. After the order was made and communicated to the petitioner, representation was made on behalf of the petitioner to the respondent by a letter dated 1-6-1951. The respondent thereupon heard a representative of the petitioner at a sitting held at Naini Tal but confirmed the order made by him on 19-5-1951. This order of confirmation was made on 9-6-1951 but was communicated to the petitioner on or about 9-7-1951, and subsequently by a letter dated 10-7-1951 the respondent called upon the petitioner to pay to Mr. Kakkar the expenses ordered to be paid by him. The petitioner thereupon moved this Court and obtained a Rule Nisi.

4. Mr. Sitaram Banerjee who appears for the opposite party has contended that the petitioner's proper remedy is to appeal from the decision of the Tribunal under Section 7, Industrial Disputes (Appellate Tribunal) Act, 1950 (Act 48 of 1950) and its remedy is not by way of an application under Article 226 of the Constitution. It is submitted that the question of the power of the tribunal to award costs against one not a party to the proceeding is a substantial question of law and hence the decision is appealable under Section 7(1)(a) of the Act.

5. It appears to me that this contention cannot be accepted. The right of appeal is a creature of Statute and it can be exercised only by those in whom the power is vested expressly or impliedly by the Statute. The Industrial Disputes Act 1947 and the Industrial Disputes (Appellate Tribunal) Act have set up Special Tribunals with special jurisdiction to decide industrial disputes. Section 12, Industrial Disputes (Appellate Tribunal) Act, is as follows:

"12. Presentation of Appeal - An appeal under this Act against any award or decision of an industrial tribunal may be presented to the Appellate Tribunal by

- (i) any party which is aggrieved by the award or decision; or
- (ii) the appropriate Government or the Central Government, where it is not the appropriate Government, whether or not such Government is a party to the dispute."

6. Thus sub-section (1) of this section entitles only a party aggrieved to present an appeal and not a person who is a stranger to the proceeding. The petitioner was not a party to the proceeding in which the decision directing it to pay certain expenses of its employee was made. It was therefore not open to the petitioner to present an appeal to the Appellate Tribunal. Mr. Banerjee referred to the case in *Prokash Krishna v. Radha Madan Gopal*¹, in support of his proposition that a stranger can appeal. But the case does not support that proposition. In that case one of the appellants was a defendant and the other was the next friend of the deity till sometime of the suit and then he was removed by an order of Court. This contention of Mr. Banerjee therefore fails.

7. The question that therefore falls for determination is whether the petitioner is entitled to any relief in this application under Article 226 of the Constitution. I am of the view that the petitioner is so entitled. Section 11(7), Industrial Disputes Act, is in the following terms:

"Subject to the rules made under this Act, the costs of and incidental to any proceeding before a Tribunal shall be in the discretion of the Tribunal and the Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid and to give all necessary directions for the purposes aforesaid and such costs may on application made to it by the person entitled be recovered as arrears of land revenue or as a public demand by the appropriate Government."

8. The wording of this section is very similar to the wording of S.35, Civil P.C, and the words "by whom" are extremely wide and give the Tribunal a complete discretion in the matter of costs. The fact that the word "party" has not been used as in S.35a, Civil Procedure Code , gives clear indication that the Legislature deliberately omitted the word "party" in Section 11(7) of the Act in order to confer the largest discretion on the Tribunal to make even a stranger to the proceeding liable for the payment of costs in appropriate cases. There can therefore be no doubt that the Tribunal has jurisdiction to direct a person who is not a party, to pay costs of and incidental to a proceeding, to such person as the Tribunal may direct. The expenses directed to be paid in the present case are those incurred for attending and conducting the proceedings at Dehra Dun and so these are costs incidental to the proceedings. The Tribunal had therefore jurisdiction to direct payment of these costs.

9. It has been held however that if the order impugned is a "speaking order" or in other words an order which on the face of it sets out the reasons for making the order, such an order can be quashed by certiorari if the reasons are bad in law. See *R. v. Northumberland Compensation Appeal Tribunal; Ex Parte Shaw*²,

10. Now a stranger to a proceeding can be made liable to pay the costs only under certain special circumstances. When a proceeding is an abuse of the process of the Court, costs have been directed to be paid by a stranger to the proceeding. Thus, for example, if a person not a party uses the name of a man of straw as plaintiff or uses the name of another as a blind for himself such conduct is an abuse of the process of the Court and that person can be ordered to pay the costs: *Prokash v. Radha Modan. Gopal*³, at p.304.

11. So also a person executing a Security Bond has been directed to pay the costs payable under a decree although he was not a party to the suit and no decree was passed against him on the ground that he had made himself liable under the Bond for payment of the costs, *Asuram SaDasuk v. Sub-Collector, Rajahmundry*⁴,

12. It is only on well-recognized principles that a Court can make an order for costs against a person not a party to a proceeding.

13. The respondent however has formulated a principle of his own and directed the Banks concerned to pay the expenses of their respective employees although such employees incurred the expenses in representing the interest of others in proceedings to which the Employer Banks were not parties at all. This does not appear to be a proper exercise of the discretion. The order made by the respondent was based on a wrong apprehension of the scope of the power vested in him under the provisions of Section 11(7), Industrial

²(1952) 1 All England Reporter 122

³50 Cal WN 296

⁴53 Mad 708

Disputes Act (Act 14 of 1947). In dealing with the claim of the representatives for their allowance the respondent states:

"There is no provision for this demand in the Act but it has been recognized by this time by me also with some modification, that the Union representatives should be paid as office bearers and representatives of Union and I see no good reason to depart from this establishment practice. I would, therefore, according to modified rates adopted by me direct that the Union representatives would be paid by their banks concerned, single second class fare both ways from their place of duty to Dehra Dun and back as well as Diem allowance at the rate of Rs. 5 (five) per day for the days they attended the proceedings of the Tribunal at Dehra Dun."

14. The names of the representatives are then set out and the respondent later on states in the order that these representatives should be treated as on duty for the days they attended at Dehra Dun.

15. The petitioner has been directed by this order to pay the railway fares and 13 days' allowance.

16. The Union which has been formed for the purpose of collective bargaining is for the benefit of the employees and for promotion of their interest. It is the employees who are the members of the Union. If the employees have decided that they will be represented in the proceedings by certain selected representatives of the employees, I fail to see on what reasonable principle the employer banks can be made liable to pay the expenses incurred by these representatives, employees. In the present case the petitioner bank had no control over the proceedings at Dehra Dun and if the parties to these proceedings at Dehra Dun had with the assistance of the representatives including Mr. Kakkar prosecuted the proceedings, say, for several months, would it be a reasonable order to direct the petitioner to bear the burden of the entire cost incurred by the representative for these several months although the petitioner was not a party to the proceedings and derived no benefit out of these proceedings? Does it make any difference that only few days' expenses have been directed to be borne by the petitioner? The answers must be

in the negative. It may be that the principles on which a Civil Court exercises discretion in awarding costs against strangers to the proceedings in ordinary civil litigation may not have scope for their application in proceedings relating to industrial disputes and certain different principles may have to be applied in the matter of awarding costs in respect of such proceedings, but the so-called principle on the basis of which the petitioner has been directed to pay the expenses of Mr. Kakkar in the present case does not commend to me as a sound exercise of the discretion. It is a capricious exercise of the power.

17. Not only there has been no judicial exercise of the discretion but the Order dated 19th May 1951 appears to have been passed in violation of the fundamental principles of judicial procedure. There cannot be any doubt that the Tribunal was acting judicially or quasi-judicially in determining the liability for costs and yet no opportunity was afforded to the petitioner to put forward its case and to be heard in the matter.

18. In dealing with the question as to the circumstances under which an order for costs can be made against a stranger to a suit a Pull Bench of the Allahabad High Court held that before such an order can be passed the stranger should be made a party to the litigation and he must be given an opportunity of being heard. See *Chandra Shekhar v. Manohar Lal*⁵, The order of 19th May 1951 which was passed in violation of the principles of natural justice was thus an order passed without jurisdiction and was liable to be quashed by Certiorari. It appears however that subsequently upon representation being made by the petitioner a representative of the petitioner was heard on 9th June 1951 at Naini Tal but the respondent confirmed the order that he made on 19th May 1951 at Dehra Dun. The petitioner has however not been made a party to the proceeding and has thus been deprived of its right of appeal under the Industrial Disputes (Appellate Tribunal) Act, In the circumstances the petitioner has properly invoked the jurisdiction of this Court under Article 226 of the Constitution.

19. In my view this petition should succeed. The Rule is made absolute. The orders dated 19th May 1951 and 9th June 1951 are quashed. The opposite party is directed to forbear from giving effect to these orders. The petitioner is entitled to costs of the present proceedings. Hearing fee is assessed at three gold mohurs.

Rule made absolute.

⁵ AIR 1942 All 233 (FB)