

In Re: Jitendra Nath Banerjee

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Court : Kolkata

Decided On : Jun-29-1965

Reported in : AIR1966Cal250,69CWN860

Judge : B.N. Banerjee, J.

Acts : [Advocates Act, 1961](#) - Sections 1 and 49; ;[Constitution of India](#) - Article 226; ;[Industrial Disputes Act, 1947](#) - Section 11(7)

Appeal No. : C.O. No. 625(W) of 1965

Appellant : In Re: Jitendra Nath Banerjee

Advocate for Def. : Noni Coomar Chakrabarty, ;Subrata Roy Choudhury, Advs. and ;Arun Prokash Chatterjee, Amicus Curiae

Advocate for Pet/Ap. : Party in person

Disposition : Application dismissed

Judgement :

ORDER

B.N. Banerjee, J.

1. This is a strange application by an advocate of this Court, who feels himself aggrieved by an order made by an Industrial Tribunal for payment of costs against

his client, a trade union.

2. The circumstances under which this application has been made are hereinafter set out in brief. The petitioner, Jitendra Nath Banerjee, says that he practises both in this Court and before Industrial Tribunals, in the New Secretariat Buildings, Calcutta. In paragraphs 2 to 6 of the petition, the petitioner gives an account of an unpleasant incident, on March 25, 1965, in which he alleges to have become involved in an unspecified case before the Fourth Industrial Tribunal. According to the petitioner the consequence of the incident was that the Tribunal became ill disposed towards the petitioner. That incident is not the subject of this application and is related only to serve as a background to the main allegation contained in the petition. The petitioner further states that, on May 18, 1965 (wrongly described as April 18, 1965, at places in the petition), the petitioner was to appear before the same Tribunal in an industrial dispute between Messrs. Shalimar Paints Ltd. and their workmen of the head office. On that day, the petitioner alleges, he remained otherwise engaged before this Court and could not appear before the Tribunal in due time. Thereupon, the Tribunal made the following order--

' I had been waiting till 12 a.m. The learned lawyer for the Union is not present even now. The case is taken up for hearing. The Secy. of Union appears and says that Shri Banerjee would be coming within 10 minutes. I have still waited, till 12-17 p.m. The Union is called. None is present for Union. No witnesses for union except one Sri B. Ghose, vice-President of Turner Morrison Employees Union is present. My peon searched for the Secy. and witnesses of the union, but he could find none. The Union did not even inform the Tribunal before 12 noon that Sri Banerji would be late.

However, in the circumstances, though given sufficient time the Union is absent and nobody from the side of the Union adduces evidence to support its claim. In the absence of any such evidence, I find no reason to ask the company to adduce evidence.

Sri Ginwalla for the company is present. Award reserved.

To 24-5-65, for award. '

In paragraph 13 of the petition, the petitioner alleges that later in the day he saw the Judge of [he Tribunal in his chamber, explained the circumstances whereby he was prevented from appearing in time and regretted the inconvenience caused by his absence. Thereafter, he filed an application for the matter being put up for hearing. That application was considered by the Tribunal, on May 24, 1965, and the following order was made :--

' Heard both sides on the petition filed by the Union on 18-5-65. The company was ready with witnesses on 18-5-65, but the union was in fault. The company has no objection to the hearing of the case on merits on terms. On the date fixed the company incurred some costs. However I decide to hear the case on merits on condition that the Union shall pay to the company a cost of Rs. 50 C.P. Fix 29-6-65 for hearing. '

The trade union, against which the order for costs was made, did not move against the order. The petitioner, an Advocate for the trade union, personally moved. I am not aware of any other instance where a professional lawyer took over a litigation from his client and himself went on with the same to the exclusion of his client.

3. The petitioner argued three points in support of the application. The first contention was that the orders dated May 18 and 24, 1965, were perverse orders and made with the ulterior object of penalising the petitioner. Such an order, he contended, should not be allowed to stand. His other contention was that the order for payment of costs was unwarranted under Section 11(7) of the Industrial Disputes Act and was made with arbitrariness and caprice. His last contention was that the order affected him in his profession as an Advocate and that entitled him to move this Court personally in the matter.

4. The last contention appeared to me to be a novel contention. Since the petitioner was not able to give me all the assistance that I required, I requested three leading members of the bar, namely, Mr. Noni Coomar Chakravarti, Mr. Subrata Rai Chaudhuri and Mr. Arun Prokash Chatterjee to help me as *amicus curiae*. I am grateful to them for the able assistance they rendered to me. Having considered the arguments advanced, I am of the opinion that none of the points argued by the petitioner deserves to be upheld.

5. The first contention of the petitioner is wholly without substance. It appears from the two orders quoted above, that the Tribunal showed considerable consideration to the petitioner during his absence. The Tribunal waited for the petitioner till mid-day but the petitioner did not come. It was represented before the Tribunal that the petitioner would be coming within a short time. The Tribunal further waited for him. Even then the petitioner did not come. There was nobody present further to inform the Tribunal about the movements of the petitioner. The Tribunal caused a search for the party in default but even then could not find anybody. No prayer for adjournment of the hearing of the case was made before the Tribunal. Even if made it could not be claimed as a matter of right. If, in these circumstances, the Tribunal closed the hearing of the case and reserved award it cannot be said that in allowing the application of the petitioner's client for restoration of the case for re-hearing subject to payment of costs, the Tribunal acted with perversity or with the ulterior object of penalising the petitioner, an Advocate. This allegation appears to have been made in an easy-going manner and I do not find any substance in it.

6. The second contention of the petitioner is also without substance. Section 11(7) of the Industrial Disputes Act leaves costs at the discretion of Tribunals and is couched in the following language :--

' Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal as the case may be, 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 the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue. '

Interpreting the sub-section, the Supreme Court observed in the case of Punjab National Bank Ltd. v. Sri Ram Kunwar AIR 1957 SC 276 as follows :--

'A comparison of the sub-section with Section 35 of the Code of Civil Procedure shows that the sub-section is in terms similar to those of Section 35 of the Code of

Civil Procedure except for the concluding portion of the subsection which relates to the recovery of costs as arrears of land revenue. There is also another difference in that Sub-sections (2) and (3) of Section 35, Civil Procedure Code, do not find place in the Act. On a plain reading of the sub-section, it is manifest that (1) the expression 'costs of any proceeding' means costs of the entire proceeding as determined on its conclusion and not costs in a pending proceeding, nor costs to be incurred in future by a party; and (2) the expression 'costs incidental to any proceeding' similarly means costs of interlocutory applications, etc., such costs as have been determined thereon, at the conclusion of the hearing. '

The Supreme Court upheld the right of an Industrial Tribunal to award costs on interlocutory applications, like the one that the petitioner made. There is nothing in the judgment of the Supreme Court to indicate that payment of costs on interlocutory applications cannot be made a condition precedent to the grant of the application, although the Supreme Court was pleased to indicate that such costs also may be added up and be made costs in the cause. The second contention advanced by the petitioner must, therefore, fail.

7. The last contention advanced on behalf of the petitioner must also be overruled. In this context, my attention was drawn to Section 49(c) of the [Advocates Act, 1961](#), which authorises the Bar Council of India to prescribe rules governing 'the standard of professional conduct and etiquette to be observed by advocates' and to the rules framed thereunder. Section I, Clause (1) of the Rules reads as follows :--

'An Advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.'

The Advocates Act 1961 is an Act to 'amend and consolidate the law relating to legal practitioners and to provide for constitution of Bar Councils and an All India Bar'. The authorities under the Act are the Bar Council of India and the State Bar Councils, all of which are invested with the functions 'to safeguard the rights,

privileges and interests of Advocates on its roll' (vide Sections 6 and 7 of the Advocates Act). The expression 'proper authority' referred to in Section 1 Clause (l) of the Rules quoted above should mean the Indian Bar Council or the State Bar Councils. I do not know how those bodies, not Invested with any jurisdiction over courts or Tribunals, may deal with the complaints. Possibly they may use their good offices to resolve a dispute between the Bench and the Bar. Be that as it may, the petitioner may take his chance under Section 1 Clause (1) of the Rules, if he likes. In my opinion, the petitioner has no right himself to move this Court, for a high prerogative writ, against the impugned order, to the exclusion of the party adversely affected thereby.

8. Before I close this order, I have one observation to make. The petitioner states that he saw the Judge of the Tribunal, in the privacy of his chamber, to explain the circumstances which caused his absence when his case was taken up for hearing. This he did in the absence of the other side. Applications for restoration should be moved in open court and should not be prefaced by a private visit to the presiding officer. The propriety of the conduct of the petitioner in this respect may be open to grave objection But I do not pronounce any opinion on the point. I hope the Bar Council of India may one day make appropriate rules governing approach to a Judge, by a professional lawyer in connection with his case, in the personal chamber of the Judge.

9. For the reasons aforesaid, I dismiss this application.

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