

19.04.2024
Sl. No. 07.
D/L.
Mithun
Ct.No.23.

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 9360 of 2024

**CSB Bank Ltd (Formerly The Catholic
Syrian Bank Ltd.)
Vs.
Union of India & Anr.**

Mr. Ranjay De,
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose

..for the petitioner.

Mr. Arnab Kumar Neogi

...for the respondent no.2.

This matter was heard at length on 5th April, 2024 when no adjournment was sought for by the respondent No.2 on the ground of a senior Counsel being engaged by the said respondent. In the order dated 5th April, 2024, the detailed submission, the judgments cited at the Bar on behalf of the petitioner as also on behalf of the respondent no.2 were noted down. The matter was kept under the heading 'For Orders' on 18th April, 2024. However, on 18th April, 2024 when the matter was taken up in the first call, no one appeared on behalf of either the petitioner or the respondent no.2. Only in the second call, the learned junior Advocate for the petitioner responded and

sought for an adjournment as his senior was engaged in another Court. The respondent no.2 neither appeared nor did seek any adjournment on the ground of any senior Counsel being engaged by the said respondent. Today when the matter is taken up, the learned Advocate for the respondent no.2 seeks an adjournment on the ground of a senior Counsel being engaged by the respondent no.2. I am unable to adhere to such request as the matter has been already heard at length. In such circumstances, the matter is taken up for further consideration.

The main challenge of the petitioner to the order passed by the Central Government Industrial Tribunal at Kolkata on 23rd November, 2023 in reference No.26 of 2006 (Catholic Syrian Bank Ltd. Vs. Their Workman Sri Sitangshu Bhusan Majumdar) is that the Tribunal while hearing the reference should have first decided on the validity and legality of the domestic enquiry. The petitioner says after deciding such issue as a preliminary issue, the Tribunal could have gone into the issue of disproportionate punishment. Only at the second stage the Tribunal was entitled to interfere with the quantum of punishment by assigning reasons and substitute the punishment in place of that imposed by the employer(petitioner). It is also the case of the

petitioner that instead of following such two tier system the Tribunal went on to decide on the question of punishment at the very initial stage. The petitioner in support of its contention had relied upon two judgments which are as follows:- 1) (2004) 12 SCC 579 (Principal Secretary, Govt. of A.P. & Anr. Vs. M. Adinarayana) and 2) (2018) 18 SCC 21 (M.L.Singla Vs. Punjab National Bank & Anr.).

It is submitted by the respondent No.2 that the writ petition is premature as the Tribunal has not finally decided the issue referred to it. Unless there is a final decision, the writ petition is not maintainable because of being premature.

The respondent no.2 has relied upon the following judgments:- i) 2008 (12) SCC 675 (State of U.P. & Anr. Vs. U.P.Rajya Khanij Vikas Nigam S.S. & Ors.), ii) a judgment and order dated 8th August, 2023 passed by the High Court of Jammu & Kashmir and Ladakh in OWP No.1419/2010 (Vishwakarma Gun Works Vs. Industrial Tribunal Court & Ors.).

The maintainability of the writ petition on the ground of being premature is opposed by the petitioner by citing a judgment reported in 2022 SCC OnLine Cal 3140 (Birla Building Limited Vs. State of West Bengal & Ors.).

After hearing the parties, considering the materials on record as also the judgments cited at the Bar, I find that the ratio laid down in the judgment cited by the petitioner being M. Adinarayana (supra) is not applicable in the facts of the instant case. However, the questions raised by the petitioner in challenging the order impugned has been clearly answered in the judgment of M.L. Singla (supra). In Paragraphs 15 to 24, 26 to 27 of the said judgment, the Hon'ble Supreme Court has clearly laid down as to how a Tribunal should hear out a reference in connection with a challenge to a domestic enquiry.

On a perusal of the order impugned in the light of the procedure laid down by the Hon'ble Supreme Court for the Tribunal to consider a reference relating to domestic enquiry in M.L. Singla (supra), it is apparent that the said procedure has not been followed by the Tribunal in the instant case. Although, the respondent no.2 says that the writ petition is premature as the Tribunal has not finally decided the issue for which the writ petition is not maintainable but the way in which the Tribunal has proceeded being contrary to the settled provision laid down by the Supreme Court, the order impugned is clearly in excess of jurisdiction. Once an order of a Tribunal is in

excess of jurisdiction, the same can be challenged in a writ petition without waiting for the final order to challenge the findings apart from on merits on the ground of being in excess of jurisdiction. The writ petition, therefor, is maintainable. That apart, the order of the Division Bench in Birla Building Limited (supra) also supports this view that the writ petition is maintainable.

In the aforesaid facts and circumstances, the order impugned dated 23rd November, 2023 passed by the Central Government Industrial Tribunal at Kolkata is set aside. The said Tribunal is directed to hear the matter afresh following the ratio laid down as in M.L.Singla (supra). Since the reference is of the year 2006 and is still pending and that the same pertains to a challenge to a domestic enquiry held as against the respondent no.2, the Central Government Industrial Tribunal at Kolkata is directed to dispose of the reference as expeditiously as possible but not beyond six months from the date of communication of a server copy of this order.

All parties including the Central Government Industrial Tribunal shall act on a server copy of this order without insisting upon production of a certificate copy thereof.

Nothing further remains to be adjudicated in this writ petition. The writ petition, is, accordingly disposed of, however, without any order as to costs.

(Arindam Mukherjee, J.)