

I/349154/2022

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 1112. /(LC-IR)/10L-03/2015 Date: 16/12/2022

ORDER

—
WHEREAS under the Government of West Bengal, Labour Department Order No. 82-I.R./8L-14/2008 dated. 21/01/2009 the Industrial Dispute between M/s Kesoram Textiles Mills (M/s. Kesoram Industries Ltd., Textile Division), 42, Garden Reach Road, Kolkata - 700024 its Head Office at 9/1 R.N. Mukherjee Road, Kolkata - 700001 and their workmen 1) Garden Reach Textile Worker's Union, P - 66, Garden Reach Road, Kolkata - 700024, 2) Garden Reach Sutakal Sramik Union, P - 40, Garden Reach Road, Kolkata - 700024, 3) Kesoram Cotton Mills Employees Union, P - 176, Bichali Ghat Road, Kolkata - 700024, 4) Kesoram Cotton Mills Employees Union, S - 163 Lichu Bagan, Kolkata - 700024, 5) Kesoram Industries Cotton Mills Mazdoor Sangh, 10, Kiran Sankar Ray Road, Kolkata - 700001 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fourth Industrial Tribunal, West Bengal.

AND WHEREAS of the said Fourth Industrial Tribunal, West Bengal, has submitted to the State Government its award 28/11/2022 on the said Industrial Dispute vide memo no.1733 - L.T. dated 28/11/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

sdt

Joint Secretary
to the Government of West Bengal

/349154/2022

No. Labr/ 1112/1(8) / (LC-IR) Date : 16/12/2022

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s Kesoram Textiles Mills Ltd. (M/s. Kesoram Industries Ltd., Textile Division), 9/1 R.N. Mukherjee Road, Kolkata - 700001.
2. Garden Reach Textile Worker's Union, P - 66, Garden Reach Road, Kolkata - 700024.
3. Garden Reach Sutakal Sramik Union, P - 40, Garden Reach Road, Kolkata - 700024.
4. Kesoram Cotton Mills Employees Union, S - 163 Lichu Bagan, Kolkata - 700024.
5. Kesoram Industries Cotton Mills Mazdoor Sangh, 10, Kiran Sankar Ray Road, Kolkata - 700001.
6. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
7. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
8. The Sr. Deputy, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Joint Secretary

No. Labr/ 1112/2(2) / (LC-IR) Date : 16/12/2022

Copy forwarded for information to:

1. The Judge, Fourth Industrial Tribunal, West Bengal with reference to his Memo No.1733 - L.T. dated 28/11/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

Case No. VIII-02/2009

Present: Smt. Durga Khaitan, Judge, 4th Industrial Tribunal

Order No. 242 Dt.28.11.22

The petitioner company has filed this application for recalling/review of order dated 31.08.2022 under rule 27 of Industrial Dispute Rules read with section 20 of Industrial Dispute Act, 1947 on the ground stated therein.

The Union has objected to this application by filing written objection.

The grounds for review as pleaded by the company are noted in page-9 & 10 of the application where it is written that the Tribunal has committed several procedural irregularities in passing award in favour of the respondent which has caused serious prejudice to the applicant.

It is further pleaded that the award has been passed without hearing the applicant company and without considering the evidence adduced by the applicant/witness. The company has further stated that these procedural irregularities committed by the Tribunal go to the root of the matter and invalidate proceeding itself as held by the Hon'ble Supreme Court in numerous decisions which applicant company will refer at the time of hearing of the application. So, the impugned order being contrary to the law laid down by the Hon'ble Supreme Court is liable to be recalled.

The Company has further pleaded that under such circumstances, the impugned order may be recalled and it prays for re-hearing of the matter and for passing an order afresh.

The Company has further stated that it is entitled to file this application and prayed for relief as impugned award has not yet been published as per provisions



of 1947 Act and as such not attained finality and the proceeding has not been completed as per section 3 of rule 20 of 1947 Act. So, the impugned order dated 31.08.2022 be reviewed/recalled and reference be re-heard.

The Union has objected to this application by filing written objection stating therein that there is no provision under rule 27 of West Bengal Industrial Rules, 1958 to recall/review the contested award on the ground as stated in the petition by the Company.

It is further pleaded by the Union that the award passed on 31.08.2022 is wrongly stated as 'Order' by the Company and this Tribunal is not a Court of appeal for the contested award passed by it. The Tribunal cannot review this award except on the ground specified under Rule 27 of West Bengal Industrial Dispute Rule, 1958.

The application filed by Company does not set out any such ground in tune with Rule 27 & 28 of Industrial Dispute Rules. The application, therefore, is not maintainable and is liable to be rejected pleaded the Union.

It is further case of the Union that no mistake or error apparent on the face of record is pointed out by the Company and Rule 27 provides that during review, the Tribunal can only correct any mistake or error apparent on the face of record.

Thus, the application is liable to be rejected in limini.

In their written and oral argument Ld. Counsel for Company argued that:-

1. Ld. Counsel for Company candidly submitted that they have not found any clerical or arithmetical error or mistake on the face of the record.
2. Ld. Counsel further argued that only procedural irregularities the Company is pleading is that the award was passed without hearing the



Company and without considering the evidence adduced by the applicant/witness. Ld. Counsel, however, in his fairness, candidly admitted that oral argument of Company was heard at length for many days and thereafter, the Company was also permitted to file written notes of argument.

3. Ld. Counsel for Company argued that the review should be allowed as Tribunal did not take into account exhibit E i.e. income tax statement of Company for financial year 1999-2000. But on query he admitted that the date of declaration of suspension of work was with effect from 05.01.1999 i.e. prior to the financial year 1999-2000.

4. Ld. Counsel for company referred to following judgements:

(a) M. M. Thomas Vs. State of Kerala and another (2000) 1 SCC

666 and referred to para 14 of this judgement where Hon'ble Court has pleased to hold "The High Court as court of record, as envisaged in Article 215 of the Constitution must have inherent power to correct the record Hence any apparent error is noticed by the High Court in respect of any order passed by it the High Court has not only the power but a duty to correct it".

(b) Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and

Waiving Mills Ltd. And Anr. (2005) 13 SCC 777 and argued that power of procedural review is inherent – In this case, Hon'ble Court has held that, "Hence, and since on facts review sought was not a procedural review, but review on merit (on ground that some issues which ought to have been considered by Tribunal were not duly considered), held it was impermissible".



(c) Mallar Mukherjee Vs. Ruby Mukherjee (2004 (2) CHN 26:

Hon'ble Court held and explained that the scope of review is very limited and as circumscribed by provisions of order 47 rule 1 of CPC and it is a matter between the order and review and Court itself when it is confined to the ground of error apparent on the face of record (relevant para 12).

(d) Yashwant Sinha &ors. Vs. CBI (2020) 2 SCC 338- The Ld.

Counsel argued that in this case, Supreme Court has defined what is error apparent.

5. Ld. Senior Counsel for Company Mr. Majumdar argued that the tribunal in its award dt. 31.8.22 failed to address issue no. 6 and such mistake on the part of tribunal is an error on the face of the record as per section 27(2) of West Bengal Industrial Dispute Rules 1958 so this Tribunal ought to allow the review application and address issue no. 6.
6. Ld. Senior Counsel for company argued that company may be permitted to distinguish the judgement of M/s. Jenson and Nicholson (I) Ltd. Vs. the State of West Bengal & Ors. (ref. WP No. 29968(W) of 2015 order dt. 6.3.2017 which was referred by the workman during argument and is discussed in the award at page 40 para 16 (a) and argued that in said judgement financial stringency was caused due to sudden flood but in the case before this tribunal the situation is otherwise so this judgement is distinguishable from the instant case.
7. Ld. Senior counsel for company further argued that the ratio of M/s. Jenson and Nicholson (I) Ltd. Vs. the State of West Bengal & Ors. is not applicable to this case as pendency of conciliation proceeding as under section 23 of ID Act means and implies pendency before the conciliation



board and in the instant case the conciliation proceeding was pending before the conciliation officer but not before the conciliation board so referred case is not applicable.

8. Ld. Counsel for Company argued that no other procedural irregularities is mentioned in their application and he is unable to point out any other procedural irregularities as mentioned in para 4 at page 9 of the application.

Ld. Counsel for Union argued that

1. The Company has referred to the award dated 31.08.2022 as 'Order' in the heading of its application only for the purpose of justification its prayer but the body of the application makes it clear that it was a contested award and not an interlocutory order. In this context, Ld. Counsel referred to the definition award as laid down in section 2(b) of Industrial Dispute Act.
2. Ld. Senior Counsel for Union Mr. Dutta argued that the Company has stated in para 6 at page 10 of its application that the impugned order has not yet been published. But this application was filed on 21.09.2022 and award was published on 09.09.2022 and interestingly the Company has itself annexed copy of the published award with this application. So, it is clear that the Company had the copy of published award when they filed this application and the Company chose to state under affidavit that the award has not been published and such act on the part of the Company shows that it has not come to the Tribunal with clean hands and has made false statement on oath to mislead the Tribunal.



3. The Ld. Senior Counsel for union argued that as the company was heard in detail and they themselves declared their argument as closed, there is no scope whatsoever on the part of the company to argue on merit and /or distinguish any judgement referred during the hearing of argument prior to passing of the award or to point out adjudicational error if any. Doing that is the sole domain of appellate authority and this Tribunal is not sitting in appeal of its own award.
4. Ld. Senior Counsel for union argued that in M/s. Jenson and Nicholson (I) Ltd. Vs. the State of West Bengal & Ors. Hon'ble High Court made no distinction between conciliation board and conciliation officer and as such this Tribunal has no scope of travelling on that road. Thus the review application ought to be summarily rejected argued Ld. Counsel for Union.

Ongoing through the petition, written objection and the arguments of both sides, it is found that:-

1. The only provision for review of the award passed under Industrial Dispute Act is laid down under Rule 27 of West Bengal Industrial Dispute Rules, 1958. Rule 27 of West Bengal Industrial Dispute Rules lays down-¹[27. Correction of errors and review of an award - The Labour Court, Industrial Tribunal or Arbitrator may - (i) correct any clerical or arithmetical mistake arising from an accidental slip or omission in any award made by it or him, and (ii) review an award on the ground of some mistake or error apparent on the face of the record, either of its/his own motion or on the application of any of the parties;(iii) for sufficient cause set aside after notice to the opposite party or parties, as the case may be, the *ex parte* award or an award on the footing that the



industrial dispute under reference is no longer in existence either of its/his own motion or on the application of any of the parties];

Provided that no correction shall be made without previous notices to the parties or opposite party, as the case may be:

³[Provided further that no application for review under clause (iii) shall be entertained on the expiry of the 15th day from the date of the award]”.

2. The Company has pleaded that there are various Supreme Court's Judgements laying down that an award can be reviewed on the ground stated by the Company i.e. that the evidence of Company was not considered by the Tribunal or that an award can be reviewed on the ground that the issue no-6 was not discussed fully was not considered by the Tribunal and the Company has further pleaded that it will mention and refer stated judgements during hearing of the petition. But neither was any such judgement of any Hon'ble Court mentioned in the petition nor was any such judgement referred by the Company during hearing of the petition. None of the Judgements referred during hearing lay down any such interpretation of 'error apparent on the face'. (Judgements discussed in para 7 onwards below).

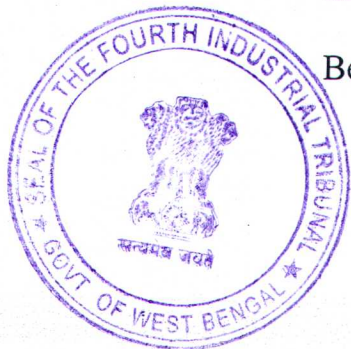
3. Ld. Counsel for Company repeatedly argued that Company's counsel was not heard on law point but record shows that on 17.2.22 oral argument of Ld. Counsel for Company was heard at length, on 14.3.22 Ld, Counsel for company filed list of dates and company's oral argument was further heard at length. On 19.4.22 oral argument of Ld. Counsel for company was heard at length and was declared close by Company and company filed compendium of cases. On 12.5.22, Ld. Counsel for company submitted that he will file written notes of argument on next date. On



31.5.22, Ld. Counsel for Union submitted that it will be feasible for him to argue after receiving copy of written notes of argument to be filed by company. Finally on 1.8.22 Ld. Counsel for company filed written notes of argument. Ld. Counsel for union filed list of important dates. The oral argument of union was heard at length and in full. And the Union sought for time to file their written notes of argument. On 16.8.22, Ld. Counsel for union filed written notes of argument along with list of dates and copy of the sole judgement referred by union. Thereafter, both sides were heard and it was noted in the order sheet that, I quote "Ld. Counsel for both sides declared their argument as closed" and date was fixed for delivery of award. So, the argument that the company was not heard on law point is not found to be true as reflected from the order sheet.

4. Ld. Counsel for company argued that page 37 to 40 of the award deals with the submission made on behalf of Union with reference to case laws cited and that case laws cited by company was not discussed, but page 33 to 37 of the Award shows that all the judgements referred by company were duly discussed and page 31 to 37 of the awards shows that whole of the oral and written arguments put forward by Ld. Counsel for company was duly discussed. So, this argument laid by Ld. Counsel for company is not found to be sustainable as found from the Award although the same cannot be a ground for review as under rule 27 of Industrial Dispute Rules.

5. Ld. Senior Counsel for Company argued that the tribunal in its award dt. 31.8.22 failed to address issue no. 6 and such mistake on the part of tribunal is an error on the face of the record as per section 27(2) of West Bengal Industrial Dispute Rules 1958 so this Tribunal ought to allow the



review application and address issue no. 6. But page 43 para (9) of Award shows that the Tribunal did discuss Issue no-6 and arrived at a finding that, I quote, "The same being matter of policy and not effecting the existing workmen, it will be premature to adjudicate the same at this stage". So, the Tribunal did address Issue no-6, So, this argument laid by Ld. Counsel for company is not found to be sustainable as found from the Award although the same cannot be a ground for review as under rule 27 of Industrial Dispute Rules.

6. So far as judgements referred by Ld. Counsel for Company are concerned:-

7. **M. M. Thomas Vs. State of Kerala and another (2000) 1 SCC 666** and referred to para 14 of this judgement where Hon'ble Court has pleased to hold "The High Court as court of record, as envisaged in Article 215 of the Constitution must have inherent power to correct the record Hence any apparent error is noticed by the High Court in respect of any order passed by it the High Court has not only the power but a duty to correct it". Ld Counsel for Union argued that this judgement was passed under Forest Act and it deals with the High Court's power of review read with inherent power of Hon'ble High Court so the same is factually and legally distinguishable.

8. **Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. And Anr. (2005) 13 SCC 777** and argued that procedural review is inherent – In this case, Hon'ble Court has held that, "Hence,

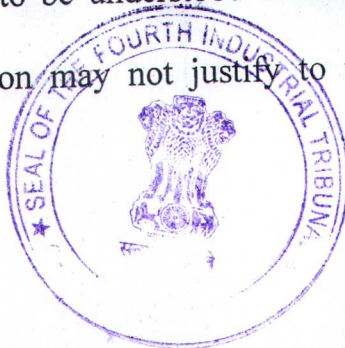
and since on facts review sought was not a procedural review, but review on merit (on ground that some issues which ought to have been considered by Tribunal were not duly considered), held it was



impermissible". Thus Hon'ble Court has categorically held that there can be no review on merit. In this case the Hon'ble Court has further pleased to hold that power of review is not an inherent power under Labour law and it must be conferred by law expressly except when it is for procedural review (head note B). In the review application before this Tribunal Ld.Counsel for Company has taken the exact point that as issue no-6 was not duly considered by this Tribunal, so prayer for Review may be allowed But In referred case Hon'ble Court held that there can be no review on the ground that some issue which ought to have been considered by Tribunal were not duly considered.

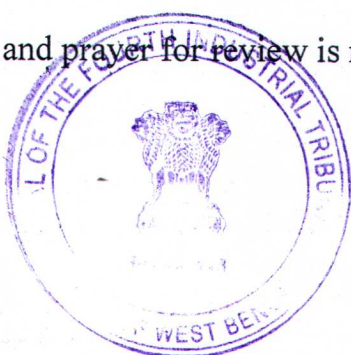
9. **Mallar Mukherjee Vs. Ruby Mukherjee (2004 (2) CHN 26:** Hon'ble Court held that the scope for review is very limited and circumscribed by the provisions of order 47 rule 1 CPC. Review on the ground of error apparent on the face of record. Hon'ble Court explained that the scope of review is very limited and as circumscribed by provisions of order 47 rule 1 of CPC and it is a matter between the order and review and Court itself when it is confined to the ground of error apparent on the face of record (relevant para 12).

10. **Yashwant Sinha &ors. Vs. CBI (2020) 2 SCC 338-** The Ld. Counsel argued that in this case, Supreme Court has defined what is error apparent. In this judgement Hon'ble Supreme Court has dealt with power of judicial review of the Supreme Court and has repeatedly harped upon the fact that Supreme Court is final Court and no appeal lies and that the review petition is not to be understood as an appeal in disguise and a mere erroneous decision may not justify to review a decision which



betrays an error which is apparent thus entitled the Court to exercise its jurisdiction under article 137 of the constitution. Thus, in this case, Hon'ble Supreme Court has dealt with power of review as under the article 137 of the Constitution. Hon'ble Court has categorically stated that ".... However, when the Court is invited to exercise its power of review, this aspect may also be borne in mind viz. that unlike the other Court from which an appeal may be provided either under the constitution or under other law or by special leave under article 136 of the constitution no appeal lies on the judgement of Supreme Court and it is in that sense the final court. Underlined assumption for the principle that a review is an appeal being that decision is appealable is really not available in regard to a decision rendered by the Supreme court, is all that being pointed out. (relevant para 76 and 77).

In view of above discussion, it is found that the petitioner Company has failed to establish that there was any clerical or arithmetical mistake arising from an accidental slip or omission in the award or some mistake or error apparent on the face of the record or there was any clerical or procedural error warranting a review. In *Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. And Anr.* (2005) 13 SCC 777, Hon'ble Court held that there can be no review on the merit on the ground that some issues which ought to have been considered by Tribunal were not duly considered. In all the cases referred by Company as discussed above, Hon'ble Courts have clearly laid down the limited scope of review and ground warranting the same. Thus the petition is found to be devoid of merit and prayer for review is rejected after due consideration.



Hence, it is

ORDERED

That the application for review is rejected on contest without cost.

Dictated & corrected by me

Sd/-

Judge

Sd/-

Judge

4th Industrial Tribunal

28.11.2022

Judge

Fourth Industrial Tribunals W.B.

