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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 22nd May, 2018

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W.P.(C) 4950/2018

INSTITUTE OF TOWN PLANNERS, INDIA Petitioner

Through: Mr.Sanjeev Sindhwani,
Sr.Advocate with Mr.Pramod Gupta and
Ms.Khushboo Aggarwal, Advocates.

versus

MAHENDER SINGH MEHRA Respondent

Through: Mr.Avtar Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. This writ petition impugns the orders dated 02.05.2018 and 04.05.2018 passed by Ld.Presiding Officer, Labour Court-XVII, Dwarka Courts, Delhi (in short ‘POLC’) in LIR No.774/2018.
2. The relevant facts leading to file the present writ petition are that the Government of NCT of Delhi on raising of an industrial dispute by the respondent made a reference to the Labour Court.
3. The term of reference are as under:-

“Whether the services of Sh. Mahender Singh Mehra S/o Sh Diwan Singh Mehra aged 32 years have been terminated by the Management illegally and/or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. The parties to the petition appeared before the 1d. POLC on 19.04.2018 when the Statement of Claim was filed by the respondent and matter was adjourned to 26.04.2018 for filing of the written statement by the petitioner. On 26.04.2018, the written statement could not be filed, however, on behalf of the petitioner/Management, the authority letter in favour of Sh. Pramod Gupta, Authorized Representative/Advocate (in brief 'AR') was filed. The 1d. POLC directed to file the written statement on or before 02.05.2018 as last opportunity. On 02.05.2018, on behalf of the petitioner, the proxy AR filed written statement which was not taken on record being not signed on behalf of the petitioner/Management. Its copy was supplied to the AR of the respondent and the original written statement was returned to the proxy AR for the petitioner/Management with the direction to file after getting it signed on behalf of the petitioner. For wasting the time of the Court, a cost of Rs.5,000/- was also imposed on the petitioner. The matter was adjourned to 04.05.2018.

5. On the adjourned date i.e. 04.05.2018, 1d. POLC passed the following order:-

"04.05.2018

Present: Sh. B.N.Sharma, Ld.ARW with claimant Sh.P.C.Dogra, proxy counsel for Sh.Pramod Gupta, Main ARM.

Sh. P.C.Dogra is accompanied by a lady namely Ms.Akriti who is claiming herself to be the intern of Mr.Pramod Gupta. She tried to place

on record WS signed by one Mr.Mahesh claiming himself to be Office Secretary. The vakalatnama in favour of Sh. Pramod Gupta has also been signed by said Mr.Mahesh. But there is no board resolution/authorization letter in favour of Mr.Mahesh. So, it cannot be said that the vakalatnama and WS has been signed by proper person on behalf of Management. When there is no vakalatnama by a proper person, it cannot be said that there is any main counsel in the case on behalf of management. Same was the position on the last date. Hence, it is held that there was no representation on behalf of management on the last date and today and so, it is proceeded ex parte.

Put up for ex-parte W.E on 9.5.2018.”

6. On 04.05.2018, the written statement duly signed and verified by Office Secretary Sh. Mahesh of the petitioner and vakalatnama in favour of Sh. Pramod Gupta, Advocate were filed before ld. POLC. However, as the same were not being accompanied by the Board Resolution/Authorization Letter, the same were not taken on the record and the ld. POLC observed that there is no proper *vakalatnama* by a proper person on behalf of the petitioner, and hence the petitioner was proceeded ex-parte. Matter was listed for ex-parte evidence for 09.05.2018.
7. It is submitted by ld. senior counsel for the petitioner that the ld. POLC has been acting in a very hasty manner and did not accept the written statement duly signed and verified by the Office Secretary of the petitioner/Management along with the

affidavit. He submits that earlier on 02.05.2018 also, the ld. POLC did not accept the written statement, which was though not signed on behalf of the petitioner/Management but was signed by their counsel and annexed with a duly sworn affidavit. He submits that the ld. POLC has hastily imposed a cost of Rs.5,000/- on the petitioner on the pretext of wasting the time of the Court. He further submits that even the written statement duly signed and verified, which was filed on 04.05.2018, was not taken on record and without applying its judicial mind, the ld. POLC, in a haste, proceeded the petitioner ex-parte. He submits that after stay of the proceedings by this Court, on 15.05.2018 the ld. POLC had adjourned the matter to 29.05.2018 for ex-parte evidence. He has placed on record the copy of the order dated 15.05.2018. He submits that the rules of natural justice and fair play have been violated and the petitioner is being denied its right to defend without any justification and fault.

8. *Per contra*, it is submitted by the learned counsel for the respondent that since the written statement was not signed and verified by a duly authorized person on behalf of the petitioner, the same was rightly not taken on record and there is no merit in the writ petition.
9. The **Hon'ble Supreme Court** has held in **State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru & Ors. (2003) 6 SCC 641** that powers under Article 227 of the Constitution of India are wide and can be used, to meet the ends

of justice. **The powers under Article 227 can be used to interfere even with an interlocutory order.** The purpose to exercise the power under Article 227 is to keep the subordinate Tribunals within the limits of their authority and to see that they obey the law. Paragraph 28 of the judgment reads as under:-

“28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. **The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.** However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction

under Article 227 could not be exercised “as the cloak of an appeal in disguise”.

10. In **Ramesh Chandra Sankla & Ors. Vs. Vikram Cement & Ors. (2008) 14 SCC 58**, the Hon’ble Supreme Court has affirmed the view taken by the High Court of Allahabad in a leading case of **Jodhey vs. State AIR 1952 All. 788**, wherein it was held that **there are no limits, fetters or restrictions placed on this power of superintendence under Article 226 and 227 of the Constitution of India and the purpose is to arm the High Court with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein**. Paragraphs 90, 91 and 98 read as under:-

“**90.** Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of Jodhey v. State AIR 1952 All. 788 observed:-

“**10. ... There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein.”**

91. The **power** of superintendence **under Article 227** of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae* i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a *court of law* but also as a *court of equity*. It is, therefore, power and also the duty of the Court to ensure that **power of superintendence** must “**advance the ends of justice and uproot injustice**”.

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98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are **discretionary and equitable** and are required **to be exercised in the larger interest of justice**. While granting relief in favour of the applicant, the court must take into account the **balancing of interests and equities**. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in *Shiv Shankar Dal Mills v. State of Haryana* (1980) 2 SCC 437 courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience.”

11. It would be profitable for the ld. POLC to advert to Order XXIX Rule 1 of the Code of Civil Procedure, 1908 (in short ‘CPC’) which provides as under:-

“1. Subscription and verification of pleading.— In suits by or against a corporation, any **pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer** of the corporation who is able to depose to the facts of the case.”

12. In **United Bank of India vs. Naresh Kumar & Ors. 1996 (6) SCC 660**, the above provision and Order VI Rule 14 of the CPC came up for consideration before the **Hon’ble Supreme Court**. It was held that even in the absence of any formal letter or authority or power of attorney having been executed, a person referred to in Rule 1 of Order XXIX CPC can, by virtue of the office which he holds, sign or verify the pleadings on behalf of the Corporation. In the absence of resolution of Board of Directors, in cases where the pleadings have been signed by one of its officers, a Corporation can ratify the said action of its officer in signing the pleadings. The relevant paragraph 10 of the judgment reads as under:-

“10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of

the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.”

13. On 04.05.2018 when the written statement duly signed and verified by the Office Secretary of the petitioner was filed, the ld. POLC could not have refused to accept and make it a part of the record. Similarly, the *vakalatnama* duly signed by the

Office Secretary of the petitioner in favour of Sh.Pramod Gupta should have been taken on record. There was no question to proceed the petitioner ex-parte by observing that there was no authorization. In view of the provision contained in Order XXIX Rule 1 CPC and judgment of **Hon'ble Supreme Court** in **United Bank of India (supra)**, there was no requirement of any Board Resolution when *vakalatnama* was signed by Office Secretary of the petitioner. Even if there was no Board Resolution or authorization in favour of Shri Mahesh, the Office Secretary of the petitioner/Management, the petitioner could have ratified the action of Shri Mahesh, Office Secretary expressly or impliedly at any subsequent point of time during the course of proceedings.

14. No doubt the Labour Court/Tribunal/National Tribunals are enjoined to answer the reference made to it within a period of six months from the commencement of its inquiry under Section 14 of the Industrial Disputes Act, 1947. **The object underlying is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is the basic element of justice cannot be permitted to be buried.**
15. **The often repeated two maxims ‘*Justice delayed is justice denied*’ and ‘*Justice hurried is justice buried*’ needs a realistic reconciliation. Passing of such harsh and hasty orders/decisions by getting annoyed from any stakeholder does not serve the ends of justice. If such hasty orders are**

passed without recourse to the judicial approach and going through the relevant provisions of law, justice is the ultimate casualty and litigant is the victim. By passing the impugned orders dated 02.05.2018 and 04.05.2018, the ld. POLC has caused more harm than good resulting in total miscarriage of justice. The post of a judge obviously is a seat of power. They have the absolute and unchallengeable control of the Court domain but they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses or their authorized representatives.

16. In view of the above discussion, both the orders dated 02.05.2018 and 04.05.2018 are hereby quashed. However, the cost of Rs.5,000/- which was imposed on 02.05.2018, if paid by the petitioner/Management shall not be claimed back from the respondent/workman. The petitioner/ Management is directed to file the letter of authorization/ *vakalatnama* in favour of its representatives and its written statement along with affidavit before the ld. POLC on the next date of hearing which shall be taken on record.
17. Before parting with the order, this Court feels the necessity of referring the subsequent order dated 15.05.2018 passed by the ld. POLC after staying the proceedings by this Court on 09.05.2018. The order reads as under:-

“15.05.2018

Present : Sh. B.N.Sharma, ARW with claimant

The management is ex-parte vide order dt. 04.05.2018.

The matter is fixed for ex-parte WE and the claimant is very much present in person. He is having his affidavit in evidence in his hand but this Court has received order dt. 09.05.2018 passed by Mr. Justice Vinod Goel that there shall be stay of the proceedings till 22.05.2018.

Due to that reason, the matter is adjourned to 29.05.2018 for ex-parte WE.

(UMED SINGH GREWAL)
PILOT COURT/POLC-XVII
DWARKA COURTS
NEW DELHI/15.05.2018”

18. **The Id. POLC seems to be ignorant and non-caring towards the orders of the higher courts. The language adopted in noting down the stay order passed by this Court lacks sobriety, deference and humility to be shown to the higher courts. This approach shows the passion of the Judge, however, a judge always needs to be impassionate, to be learned, gracious in choosing the words, in expression and erudite in his writings. The subsequent order lacks the elements of dignity, decorum and respect towards the higher courts. No rancour should reflect in any judicial order. This court feels such ignorant officer be counselled by senior colleague within the fraternity. The observation is made only to inculcate the essence of respect and obedience to the higher courts which is essential for any judicial officer.**

Hence, the learned District and Sessions Judge, Dwarka, is requested to call the officer and counsel and guide him in choosing the vocabulary and thus maintain temperance, sobriety, deference and decorum in passing the judicial orders. Let the ld. District & Sessions Judge send a compliance report within a month.

19. The petition along with pending application being CM No.19101/2018 is disposed of accordingly.
20. List for directions on 16.07.2018.

**(VINOD GOEL)
JUDGE**

MAY 22, 2018

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‘प्रथमोक्त रायदृष्टि’