

***WRIT APPEAL***  
21.05.10  
**MAT No. 396 of 2010**  
+  
**CAN No. 3025 of 2010**

**POINTS**

Police protection – Writ petitioner a company issued a closure notice – Obstruction made by the some workers to bring out materials from inside the company – Refusal by the Writ Court to grant leave to the writ petitioner for removal of plant and machinery – Writ petition if can be invoked without taking recourse to proceedings before appropriate forum – Code of Criminal Procedure, S 144 & 156(3) .

**FACTS:-**

On 13th April, 2009 the writ petitioner company issued a closure notice declaring closure of its establishment with effect from 16th June, 2009. Notice was issued on 11th May, 2009 to the workmen to collect their dues and further during 12th May, 2009 and 8th June, 2009 individual notices were served to each of the worker regarding termination of service and tendered compensation along with calculation of dues. It further appears from time to time that notices were issued to the workmen to collect their lawful dues.

It is the case of the writ petitioners that some of the workers, who had not accepted their dues alongwith some outsiders, started obstructing the petitioners to bring out such materials from the premises in question. The writ petitioner/appellant lodged complaints with the Police Authorities to that effect.

The Police Authorities did not take any steps hence an application under Section 144(2) of the Code of Criminal Procedure was filed before the Sub-Divisional Executive Magistrate, Barasat. The said learned Magistrate was pleased to pass an order on 12th June, 2009 directing the Officer-in-Charge

(O.C.), Baguihati Police Station to enquire and to report and also directed to see the possession of the petitioner is not disturbed by the private respondents and further to maintain peace over the said property. The order was communicated to all the parties on 15th June, 2009 since the Police Authorities failed to act in terms of the said order the writ petitioners filed an application under Article 226 of the Constitution of India before this Court being W.P. No. 10560(W) of 2009 when the writ petition was disposed of by an order dated 30th July, 2009 by the Writ Court directing the Officer-in-Charge, Baguihati Police Station to break open any padlock that may have been fixed at the entrance to the business premises and to ensure that the writ petitioners and the authorized representatives of the petitioners have due access to the premises. The Writ Court was further pleased to observe that in the event there is any order passed in the proceedings under Section 17A of the *payment of Wages Act, 1936* (hereinafter referred to as the said Act) - such order would prevail.

On 23rd September, 2009 the said application under Section 17A of the said Act filed by the private respondents was rejected by the by the authorities.

Subsequent thereto, the private respondents filed a petition under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate, Barasat.

Thereafter complaints have been filed by the writ petitioners before the respondent police authorities. The private respondents preferred another application under Sections 15 and 16 of the said Act before the authority.

The writ petitioners lodged series of complaints before the police authorities on the ground of missing of huge materials worth more than lakhs of rupees from the premises in question and prayed for police protection for bringing out the materials, documents, equipments, plant etc. from the said premises.

Hence, the writ petitioner being W.P. No. 3651(W) of 2010 was filed and interim order was refused by the Hon'ble First Court.

Being aggrieved this appeal has been directed against the said order dated 24th February, 2010.

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**HELD**

It further appears in this matter the writ petitioners did not take any recourse under Section 144 of the Code of Criminal Procedure or Section 156(3) of the Code before the appropriate forum. The writ petitioners have filed this application without even making out a case in the writ petition that there is any breach or any inaction on the part of the police authority.

Para 37

Without taking any recourse before the appropriate forum, the writ petitioners only stated that the police have failed to discharge his duties imposed upon them under the law.

Para 38

That in this country, in a given situation, this matter cannot be allowed to raise the discretion of the authority but the Court can take judicial notice thereof where the police authority unfortunately failed to act as the guardian of law and order and the only place where the harassed citizen can go is the Court of Law.

Para 40

If the writ petitioners suffer in any way, they first shall take the recourse which is provided provisions under the Code of Criminal Procedure and in not doing so, no order can be passed at this stage.

Para 42

**CASES CITED**

1) Mohan Pandey & Anr. vs. Smt. Usha Rani Rajgaria & Ors., reported in AIR 1993 SC 1225

2) Services Private Limited Employees' Union & Ors. vs. CPA Consultancy Service Private Limited & Ors., reported in 1995 (I) CHN 224

3) Howrah Mills Co. Ltd. & Anr. vs. Md. Shamin & Ors., reported in 2006(5) SCC 539

4)MAT No. 18 of 2010 in the matter of Loomtex Engineering Private Limited & Anr. vs. State of West Bengal & Ors

5)Mahesh Concern Workers' Union vs. M/s. M. Bhattacharya & Company Pvt. Ltd. & Ors., (MAT No.1788 of 2004 with FMA No. 812 of 2004)

6)AIR 2002 SC 997 (Chandrakant Tukaram Nikam & Ors. vs. Municipal Corporation of Ahmedabad & Anr.).

7)Rajasthan State Road Transport Corporation & Anr. vs. Krishna Kant & Ors., reported in (1995) 5 SCC 75.

8)U.P. State Bridge Corporation Limited & Anr. vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, reported in (2004) 4 SCC 268.

9)Case No.8 of 2009 (Shankar Nath) and P.W.A. Case No.2 of 2010 (Sirajuddin Molla)

Mr. Partha Sarathi Sengupta, Adv.

Mr. Arunava Ghosh, Adv.

Mr. Dwaipayan Sengupta, Adv.

**... For the appellants**

Mr. Anindya Lahiri, Adv.

**... For the respondents**

**THE COURT** 1)Instead of hearing the stay petition, by consent of the parties, this appeal is taken up and is disposed of.

2) This appeal is directed against an order passed by the Hon'ble First Court dated 24th February, 2010 whereby the Writ Court was pleased to refuse to pass any interim order giving liberty to the writ petitioners to remove plants/machineries etc. from the premises in question. However, the learned Trial Court was pleased to direct the police authorities to ensure that peace in and around the premises in question, is not breached. The learned Trial Court further directed the parties to file their affidavits.

3) Being aggrieved, this appeal has been filed by the writ petitioners.

4) The facts of the case briefly are as follows :

On 13th April, 2009 the writ petitioner company issued a closure notice declaring closure of its establishment with effect from 16th June, 2009. Notice was issued on 11th May, 2009 to the workmen to collect their dues and further during 12th May, 2009 and 8th June, 2009 individual notices were served to each of the worker regarding termination of service and tendered compensation along with calculation of dues. It further appears from time to time that notices were issued to the workmen to collect their lawful dues.

5) It is the case of the writ petitioners that some of the workers, who had not accepted their dues along with some outsiders, started obstructing the petitioners to bring out such materials from the premises in question. The writ petitioner/appellant lodged complaints with the Police Authorities to that effect.

6) The Police Authorities did not take any steps hence an application under Section 144(2) of the Code of Criminal Procedure was filed before the Sub-Divisional Executive Magistrate, Barasat. The said learned Magistrate was pleased to pass an order on 12th June, 2009 directing the Officer-in-Charge (O.C.), Baguihati Police Station to enquire and to report and also directed to see the possession of the petitioner is not disturbed by the private respondents and further to maintain peace over the said property. The order was communicated to all the parties on 15th June, 2009 since the Police Authorities failed to act in terms of the said order the writ petitioners filed an application under Article 226 of the Constitution of India before this Court being W.P. No. 10560(W) of 2009 when the writ petition was disposed of by an order dated 30th July, 2009 by the Writ Court directing the Officer-in-Charge, Baguihati Police Station to break open any padlock that may have been fixed at the entrance to the business premises and to ensure that the

writ petitioners and the authorized representatives of the petitioners have due access to the premises. The Writ Court was further pleased to observe that in the event there is any order passed in the proceedings under Section 17A of the *payment of Wages Act, 1936* (hereinafter referred to as the said Act) - such order would prevail.

7) On 23rd September, 2009 the said application under Section 17A of the said Act filed by the private respondents was rejected by the by the authorities.

8) Subsequent thereto, the private respondents filed a petition under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate, Barasat.

9) Thereafter complaints have been filed by the writ petitioners before the respondent police authorities. The private respondents preferred another application under Sections 15 and 16 of the said Act before the authority.

10) The writ petitioners lodged series of complaints before the police authorities on the ground of missing of huge materials worth more than lakhs of rupees from the premises in question and prayed for police protection for bringing out the materials, documents, equipments, plant etc. from the said premises.

11) Hence, the writ petitioner being W.P. No. 3651(W) of 2010 was filed and interim order was refused by the Hon'ble First Court.

12) Being aggrieved this appeal has been directed against the said order dated 24th February, 2010.

13) It is further stated by the appellants/writ petitioners that the respondent Nos.16 and 18 arrived at a settlement with the appellants regarding their legal dues and after receiving the payment and have duly executed a Memorandum of Settlement. It is further stated that the said respondents

made written complaints before the O.C., Baguihati Police Station alleging that their signatures have been forged in a letter dated 12th January, 2010 by some motivated persons and lodged a FIR on 12th September, 2009.

14)Mr. Partha Sarathi Sengupta, learned advocate appearing on behalf of the appellants submitted that the learned Trial Judge should have granted a police protection to the appellants/writ petitioners for taking out those materials and plants from the said premises. But, it appears that His Lordship refused the prayer on the ground that the other proceedings pending before the various Courts and Tribunals shall become infructuous if the writ petitioners are allowed to take out those materials from the said premises.

17)According to Mr. Sengupta, the respondents have a right to raise industrial dispute before the appropriate forum if there is any, but it is to be noted that appellants were and still is ready to make payment towards their legal dues.

18)Mr. Sengupta submitted that the appellants/writ petitioners are the owners of the machinery and/or plants etc. whatever are lying there. They have a legal right to remove the same or to dispose of those materials at their choice after declaration of closure of the said establishment.

19)Mr. Sengupta contended that the Hon'ble First Court refusing the prayer for removal of such materials he submits, extended the jurisdiction and the scope of the writ petition. In fact, by virtue of the order passed by the learned Trial Court it would create a charge or equitable right in favour of the private respondents, although, the Writ Court has no occasion to go through the veracity of the claim of the private respondents.

20)Our attention was drawn on **Howrah Mills Co. Ltd. & Anr. vs. Md. Shamin & Ors.**, reported in **2006(5) SCC 539**, when the Hon'ble Apex Court made the following observations :-

*“9. ....At best, respondents 1 to 3 herein are assignees of undivided shares from a co-owner, and prima facie, their right, if any, is to sue for partition. Prima facie, they are not entitled to enter the property or to interfere with the possession of the appellants. If the property is protected from trespassers meanwhile, it will only be to their advantage. Then, they can work out their rights without obstruction.*

*10. ....this is a case where the State should be equally interested in seeing to it that the property was fully protected until the scheme proposed by BIFR is implemented and the revival of the industry is ensured. It is said that Six thousand workers are involved and their welfare along with the welfare of the creditors and the management, depends upon the scheme being put through. One would have expected the State of West Bengal to readily respond to a request for protecting the property from trespassers so as to ensure that the revival of a sinking industry is achieved and its workers are protected. Even otherwise, in a situation like the present, it is duty of the police of the State to give necessary protection to the struggling industry to tide over the crises and protect its property from interference by lawless elements and unauthorized persons. Going by the Police Regulations, Bengal, 1943, Regulations 666 and 669, it may even be possible to say that the protection in such circumstances should be afforded even without insisting on payment by the private party seeking protection.”*  
*(emphasis supplied)*

21)Mr. Sengupta also relied upon an unreported decision of this High Court passed by the Hon'ble Division Bench in **MAT No. 18 of 2010** in the matter of **Loomtex Engineering Private Limited & Anr. vs. State of West Bengal & Ors.** In the said decision the Division Bench of this High Court relied on a decision

reported in **1994 (II) CHN 340 (Re : Kanodia Jute Mill Industries Ltd.)**, where the Court held as follows :

*“57. Coming to the merits of the writ application itself, I am also unable to accept Mr. Sengupta’s submissions that the petitioners’ remedy was and/or is confined only to a proceeding under s. 144 of the Code of Criminal Procedure. It does not require any elucidation that the provisions of s. 144 of the Criminal Procedure Code are to be invoked when there is an urgent apprehension of a serious breach of the peace. The legislature in its wisdom has, therefore, limited the life of an order under s. 144 of the said Code for a*



*period of two months. On the other hand, it is the continuous duty of the police authorities to maintain law and order and to prevent any serious breach of the peace. It is well settled that a writ in the nature of mandamus maybe issued to compel performance of statutory duties.*

*58. Contrary to Mr. Sengupta's submissions that the writ application was based only upon threats, definite materials have been provided which called for the intervention of the police authorities for the benefit of all concerned, including the workers, for maintaining an atmosphere which could have been conducive for negotiation between the parties, instead of ending in closure of the Mill. Timely action may have prevented such an eventuality and may have reduced the hardships suffered by the workers.*

*59. Mr. Sengupta's submissions that the police authorities were really being called upon to take sides in a private dispute between the management and the workers, also appear to be without substance. An establishment employing a large number of workers cannot be equated with and compared to a landlord and tenant relationship, as was sought to be urged by Mr. Sengupta, and apprehensions of a serious breach of the peace would always be present in an industrial establishment where there are conflicts and/or conflicting interests existing between the workers and the management.  
(emphasis supplied)*

*60. The decision cited by Mr. Sengupta in the case of Mohan Pande (supra) is not really applicable in this case, since the dispute involved here it cannot be called a private dispute, having regard to the dimension of the law and order problems created because of various circumstances.*

22)Mr. Sengupta submitted that the facts of the instant case are mostly similar to that of the said decision of this High Court in MAT No.18 of 2010 and he submitted that the Court would be pleased to pass an interim order in favour of the appellants/writ petitioners to remove the goods from the said premises with the help of the police authorities and the police authorities should be directed to render all assistance to remove the said goods from the said premises.

23)Mr. Sengupta further pointed out that the cases which are pending before the Second Labour Court and before the Compensation Court would show

that the private respondent cannot stand in the way in respect of the order so prayed by the appellants/writ petitioners.

24) On the contrary, Mr. Anindya Lahiri, learned Advocate, appearing on behalf of the respondents submitted that the filing of the writ petition should not be encouraged on the ground of police inaction when there is a labour dispute is pending. It is submitted that the complaint of police inaction was made after the issuance of notice of suspension of work.

25) The learned Advocate appearing on behalf of the private respondents relied upon a decision of the Division Bench in the case of **Mahesh Concern Workers' Union vs. M/s. M. Bhattacharya & Company Pvt. Ltd. & Ors.**, (MAT No.1788 of 2004 with FMA No. 812 of 2004) and submitted that where an industrial dispute is pending the Writ Court should not pass any order in the matter. He further submitted that in the instant case when the matter is pending before another forum the closure notice of suspension of work could not have been issued. He also relied upon the decision in the case of **CPA Consultancy Services Private Limited Employees' Union & Ors. vs. CPA Consultancy Service Private Limited & Ors.**, reported in **1995 (I) CHN 224** and submitted that when there is an adequate alternative remedy is available the Writ Court should not interfere in the matter. According to him, the dispute between two private parties in the guise of police inaction the Court should not pass any order since the matter is awaiting adjudication before the competent forum.

26) Mr. Lahiri further contended that even the suit is impliedly barred and the rights have been given under this statute to a particular forum under the Industrial Dispute Act, therefore, this Court will not interfere at this ad-interim stage. In support of his submission, he relied on a decision reported in **AIR 2002 SC 997 (Chandrakant Tukaram Nikam & Ors. vs. Municipal Corporation of Ahmedabad & Anr.)**.

27) He further submitted that it is the duty of the appropriate Government to take a decision and to make a reference in respect of the dispute and the Government is entitled to examine whether the dispute is *ex facie* frivolous and not meriting adjudication. In this context he relied upon the decision in the case of **Rajasthan State Road Transport Corporation & Anr. vs. Krishna Kant & Ors.**, reported in **(1995) 5 SCC 75**.

28)It is further submitted that when a dispute comes within the meaning of Industrial Disputes Act, 1947 then the parties has to take steps in accordance with such act not otherwise and reliance was placed on the decision in the case of **U.P. State Bridge Corporation Limited & Anr. vs. U.P. Rajya Setu Nigam S. Karamchari Sangh**, reported in **(2004) 4 SCC 268**.

29)Learned Counsel, Mr. Sengupta appearing on behalf of the appellants/writ petitioners in reply submitted that the private respondents cannot have any right to stand in the way of the writ petitioners from egress and ingress to the said premises. He further submitted that the closure of the writ petitioners' establishment has not yet been held by another forum as illegal in law. Mr. Sengupta further submitted that closure has not been challenged by the private respondents before any authority. Therefore, he submitted that prayer should be allowed.

30)Having heard the learned Advocate for the parties it appears to us that cases are pending before the Compensation Court which has been filed by the private respondents i.e., P.W.A. **Case No.8** of 2009 (**Shankar Nath**) and P.W.A. **Case No.2** of 2010 (**Sirajuddin Molla**).

31)Several petitions have been filed before the Learned Judge, Second Labour Court, West Bengal wherein it appears that the private respondents have raised an Industrial Disputes against illegal and unlawful termination of service of the private respondents. It further appears that the conciliation proceedings have failed and a certificate was issued by the authorities that the matter is pending for consideration as provided in **Section 10(1B)** of the **Industrial Disputes Act, 1947**. In these circumstances, the application was filed under Section 10(1B)(d) of Industrial Disputes Act, 1947 and the issues were raised in respect of the termination of service of the private respondents with effect from 16th of June, 2009

32)It appears to us that all the applications which are pending only in connection with the termination of the private respondents and which is not in dispute that the said private respondents were serving under the writ petitioners. The claim of the private respondents have also been annexed in the affidavit filed before this Court and Mr. Sengupta, learned Advocate for the writ petitioners submitted that those claims are inflated but it is not in dispute that the matter is pending before the Labour Court for adjudication of a primary question whether the termination of service of the private respondents are illegal or justified?

Therefore, in our considered opinion, the question of taking out of goods at this stage is not for the purpose of payments to be made to the workers/private respondents or in the interest of the employees as held in **Loomtex Private Engineering Limited**, in the said decision the Division Bench of this High Court passed such order only for the benefit of the workers for the purpose of running the mill in question.

33)The facts of the said case are quite different since it appears in the said decision the Court took into consideration that the valuation of the mill of the appellant company prevented the company from carrying on its business and further prevented the workers from ingress and egress and even removing the finished goods. As a result whereof, the company could not pay the electricity dues resulting in disconnection of electricity supply and consequent closure of the mill. But in the instant case, we find that the facts are different.

34)On the contrary, it appears to us that the appellants/writ petitioners have filed this appeal from the refusal of an ad-interim order passed by the Court. We have considered the decisions placed before us and we find that the Hon'ble First Court also passed an order directing the police to ensure that peace in and around the premises in question is not breached.

35)We have also considered the fact that the filing of this writ petition before this Court is nothing but after the issuance of the notice of suspension of work. In this background, it is obvious that the notice of closure is normally issued for temporary suspension of activities of the company and the obvious object is to dis-courage the trade union activities and to bring about a compromise between the demand of the labour and the stand of the management of the said company. In the instant case it appears that the notice of closure has been issued for stopping the whole business and it has been stated that in the said notice of closure that the management/writ petitioners wants to close down the factory and establishment at Kaikhali, V.I.P. Road, Kolkata with effect from 16.06.2009 permanently. It further appears that the services of workmen have already been terminated after giving them one month's notice.

36)In the background of these facts, in our opinion the question has been put forward before the Labour Court has to be gone into and to be adjudicated by the said forum. In the case of **Mohan Pandey & Anr. vs. Smt. Usha**

**Rani Rajgaria & Ors.**, reported in **AIR 1993 SC 1225** the principle laid down by the Supreme Court is as follows :-

*“The High Court cannot allow the Constitutional Jurisdiction to be used for deciding the disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly.”*

37)It further appears in this matter the writ petitioners did not take any recourse under **Section 144** of the Code of Criminal Procedure or Section 156(3) of the Code before the appropriate forum. The writ petitioners have filed this application without even making out a case in the writ petition that there is any breach or any inaction on the part of the police authority.

38)In our considered opinion, without taking any recourse before the appropriate forum, the writ petitioners only stated that the police have failed to discharge his duties imposed upon them under the law.

39)It is true as has been held in **CPA Consultancy Services Private Limited Employees’ Union & Ors. (Supra)** when the Court has dealt with the matter on a question that whether the Writ Court can interfere with the authority on the part of the police to take action on the basis of specific complaint made to it. The Division Bench of this High Court considered the position and held as follows :

*“29. The first decision was of R. Vs. Metropolitan Police Commissioner, Ex. P. Blackburn, reported in 1968 Vol. I All England Reporter page 763. At page 769 of the said Report, the learned Law Lord was pleased to say as follows :*

*“It is for the Commissioner of Police or the Chief Constables, as the case may be, to decide in any particular case where enquiries should be perused or whether an arrest should be made or a prosecution brought. It must be for him to decide on the dispositions of his force and the concentration of his resources on any particular crime or area. No Court can or should give him direction on such matter”. Again in the subsequent decision of R. Vs. Chief*

*Constables of Devon, reported in 1981 (3) All England Reporter, page 827 at page 833, Lord Denning, sitting in the Court of Appeal was pleased to observe, "It is of the first importance that the police should decide on their own responsibilities what action should be taken in any particular situation".*  
(emphasis supplied)

40)The Court also held that in this country, in a given situation, this matter cannot be allowed to raise the discretion of the authority but the Court can take judicial notice thereof where the police authority unfortunately failed to act as the guardian of law and order and the only place where the harassed citizen can go is the Court of Law. Therefore, it is not in dispute that the authority of Courts in general to direct the police to do its statutory duties cannot be doubted. But the facts of the present case is whether it calls for mandatory direction upon the police authorities.

41)We have scrutinized the facts of the present case and in our considered opinion, the factual matrix of this case cannot call for any order at this stage.

42)In our opinion, if the writ petitioners suffer in any way, they first shall take the recourse which is provided provisions under the Code of Criminal Procedure and in not doing so, we do not find that no order can be passed at this stage.

43)Hence, this appeal is dismissed. However, there will be no order as to costs.

**(PINAKI CHANDRA GHOSE, J.)**  
**(HARISH**  
**TANDON, J.)**