

(2009) 04 DEL CK 0162

In the Delhi High Court

Case No : C.S. (OS) No's. 688 and 814 of 2004

Bharat Sanchar Nigam Ltd.

APPELLANT

Vs

Sanchar Nigam Executives Association (India) Ltd. and
Another

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0162

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.V. Sinha and A.S. Singh, for the Appellant; None, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—Both suits are between the same parties and are taken together for disposal. CS(OS) No. 688/2004 was instituted first, for the relief of permanent injunction restraining the defendants and the other office bearers, members of the defendant No. 1 from resorting to strike, rallies, dharnas, demonstrations, gherao or any other unwarranted activities in and around the office premises of the plaintiff at Statesman House, Barakhamba Road, New Delhi and at Kidwai Bhawan, Janpath, New Delhi or at any other office premises of the plaintiff in Delhi or at the residential premises of any of the officers of the plaintiff. Relief was also sought of restraining the defendants from interfering in the ingress and egress of the officers, staff or public in and from the aforesaid offices of the plaintiff and/or residences of the officers of the plaintiff. The cause of action for the institution of this suit was stated to be the letter dated 16th June, 2004 of the defendants threatening dharna/demonstration.

2. Vide interim order dated 28th June, 2004 in this suit the defendants were restrained from holding rallies, dharnas, demonstrations, gheraos within the radius of 100 meters of the premises known as Statesman House, Barakhamba Road, New Delhi and Kidwai Bhawan, Janpath New Delhi and also from holding any demonstration at the residential premises of the officers of the plaintiff. The

defendants were also restrained from interfering with the ingress and egress of the employees of the plaintiff willing to work or employees of other organizations occupying the aforesaid buildings.

3. On the next date i.e. 26th July, 2004, the counsel for the defendants stated before this Court that the defendants will not act pursuant to the impugned notice dated 16th June, 2004. On 29th July, 2004, the Court was informed that all issues involved in the suit had been settled between the plaintiff and the defendants in terms of the Minutes of Meeting dated 30th June, 2004. Accordingly, this Court feeling that no cause made for continuance of the interim order dated 28th June, 2004 vacated the same. The counsel for the plaintiff, however, stated that the suit needs to continue because of the further threats by the defendants. The pleadings were thereafter completed in this suit.

4. CS(OS) No. 814/2004 was filed by the same plaintiff against the same defendants, as in CS(OS) No. 688/2004. The plaint and the reliefs claimed in this subsequent suit are also identical as in the earlier suit. It was stated in the plaint that after the vacation of the interim order in CS(OS) No. 688/2004, the defendants had threatened dharnas/demonstrations vide letter dated 15th July, 2004 necessitating the institution of the subsequent suit. The application of the plaintiff for interim relief in the subsequent suit was disposed of by a detail order dated 14th October, 2004 and in terms whereof the defendants were restrained from resorting to the threatened action impugned in the subsequent suit except in accordance with the said order. It was ordered that the demonstration and dharna shall be entirely peaceful and shall not in any manner bar or impede the ingress and egress of the officers, staff and visitors of Kidwai Bhawan, Janpath, New Delhi and such action of the defendants should not disturb functioning of the plaintiff. It was further clarified that the lunch hour demonstration will not be held inside the Kidwai Bhawan building but only outside the building but in the compound comprising of 2000 sq. yds. The order was made with respect to Kidwai Bhawan only on the statement of the counsel for the defendants that they did not intend to hold demonstration at any other location. An appeal being FAO(OS) No. 252/2004 was preferred by the plaintiff against the said order dated 14th October, 2004 but the same was dismissed with the modification that in the event of any demonstration proposed to be held it may be so held within 100 meters away from the building.

5. The pleadings in the subsequent suit were also completed.

6. It may be mentioned that even though in CS(OS) No. 688/2004, the interim order dated 28th June, 2004 had been vacated on 29th July, 2004 but in order dated 19th January, 2006, therein, without reference to the order dated 29th July, 2004, the order dated 28th June, 2004 was confirmed during the pendency of the suit.

7. Identical issues were framed in both the suits on 19th January, 2006 as under:

(1) Whether the present suit is liable to be dismissed for want of cause of action?

OPD (2) Whether the activities of the defendants were carried out in a peaceful manner without hampering ingress/egress and without breach of peace? OPD (3) Whether the defendants were justified in issuing the letter dated 16.6.2004 as the management of the plaintiff company failed to redress the issues and grievances raised by the defendants? OPD (4) Whether the plaintiff is entitled to a decree of permanent and mandatory injunction against the defendants, as prayed? OPP (5) Whether the program/action carried out by the defendants in terms of the letter dated 16th June, 2004 is illegal? OPP (6) Whether the complaint submitted by the Association Editor of the Statesman or the complaint submitted by M/s. Jhonson Control India relate to any activities of the defendants who are group B Officers in the plaintiff Company? OPP (7) Whether the defendants have a right in law to hold dharnas/demonstration etc. as pleaded in the plaint without keeping any distance from the premises of the plaintiff? OPP (8) Relief.

8. Though there is no order consolidating the two suits or the trial therein but the two suits were listed on the same date from time to time. The plaintiff has examined the same witnesses in both the suits who have filed their affidavits by way of examination in chief. There affidavits are also identical.

9. The defendants failed to appear before the Joint Registrar for cross-examination of the witnesses of the plaintiff and have been proceeded against ex parte.

10. Though the cause of action for the two suits were the notices dated 16th June, 2004 and 15th July, 2004 respectively and which cause of action has disappeared during the pendency of the suit itself but the suits were continued by the plaintiffs, it appears on the larger issue as to the entitlement at all of the defendants to strike work and engage themselves in dharnas/demonstrations. A reading of the order dated 14th October, 2004 (supra) in CS(OS) No. 814/2004 discloses that it was the contention of the counsel for the plaintiff that in view of the judgment of the Apex Court in T.K. Rangarajan Vs. Government of Tamil Nadu and Others, and in Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, , the employees have no fundamental or statutory right to resort to strike. Per contra, the counsel for the defendants had relied upon Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation AIR 1960 SC 28 to contend that the right to strike was a part of the freedom of speech and expression and a fundamental right under the Constitution of India.

11. However, during final hearing, the counsel for the plaintiff has not addressed on this aspect. The defendants having been proceeded ex parte and the cause of action for the suits being as aforesaid and which appears to be not surviving now, I do not deem it expedient to adjudicate the said controversy in the present proceedings. However, so as not to prejudice the plaintiff and or to debar them from raising the said plea at any point of time, liberty is granted to them to the said effect.

12. Otherwise, I find that the courts including this Court have from time to time in suits of such nature, while not prohibiting the employees/their associations from holding strikes, dharnas, demonstrations, etc, have been making orders to ensure that such actions of the employees/their associations do not bring the functioning and services of the corporate/institutions to a standstill and do not force persons willing to work to join in such agitations. In my opinion, the present suits can also be disposed of on the same lines.

13. Though issues were framed as aforesaid, but the defendants having been proceeded against ex parte, need is not felt to deal issue wise. Suffice it is to state the affidavits of evidence of the witnesses of the plaintiff and which remain uncontroverted disclose that there was a cause of action for institution of both the suits and the plaintiff had also received complaints from the other occupants of the buildings in which the offices of the plaintiff are located. The defendants cannot be permitted to hold dharnas/demonstrations wheresoever's they may desire. If the defendants are given such liberty, the same is definitely likely to interfere with the functioning business activities of the plaintiff and is likely to inconvenience the visitors and other persons to the offices of the plaintiff.

14. The plaintiff had sought the relief with respect to three categories of premises i.e. Statesman House, Kidwai Bhawan and the residences of the officers of the plaintiff. The counsel for the defendants while addressing on the application for interim relief in CS(OS) No. 814/2004 had confined the right to hold demonstrations dharnas, etc at Kidwai Bhawan only. Even otherwise considering the location of Statesman House at Barakhamba Road, abutting outer circle of the Connaught Place and the dense commercial activities in the buildings surrounding the same and the volume of traffic on the roads/lanes around the said building and further considering the fact that the plaintiff is merely one of the occupants of the said building, and any activities of the defendants are likely to disturb/affect the functioning of the other occupants of the building, as well as the free flow of traffic around the said building, the plaintiff is found entitled to absolute injunction qua the said Statesman House. Similarly, the defendants have no right to hold any demonstrations at the residences of the officers of the plaintiff. The officers of the plaintiff act in discharging of their own functions/duties and have no personal interest in the disputes/issues, if any, with the defendants and no disturbances at the residences of the said officials which also house the other family members of the said officials can be permitted.

15. As far as Kidwai Bhawan located on Janpath is concerned, the defendants have no right to hold demonstrations/dharnas on the public roads/pavements. Vide interim order they were permitted to demonstrate within open compound of the said building, at a distance of 100 meters from the building. In my opinion, the same order which appears to have served the purpose during pendency of the suit can be made final order in the suit as well.

16. The suit of the plaintiff is, therefore, decreed in the following terms:

(1) A decree for permanent injunction is passed in favour of the plaintiff and against the defendants and the office bearers and members of the defendant No. 1, restraining/prohibiting them from holding any demonstration, dharna, rally, gherao or any other similar activity in and around the office premises of the plaintiff at Statesman House, Barakhamba Road, New Delhi or in and around the residential premises of the officers of the plaintiff.

(2) A decree for permanent injunction is also passed in favour of the plaintiff and against the defendants and the office bearers and members of the defendant No. 1, restraining/prohibiting them from holding any demonstration, dharna, rally, gherao within a distance of 100 meters from the building known as Kidwai Bhawan. It is, however, clarified that the said distance is to be measured not from the outer boundary wall of the property known as Kidwai Bhawan but from the building within the compound of the property.

(3) The defendants are also restrained from interfering in any manner whatsoever with the entry and exit of any person to and fro the said building and/or from the functioning of the affairs/business of the plaintiff in any manner whatsoever and/or from stopping any employee/worker/officer of the plaintiff, if so willing, from discharging his functions/duties in terms of his employment.

17. However, in the facts of the case, the parties are left to bear their own costs. Decree sheet be drawn up.