
(2001) 07 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 28377 of 2001 and others

BPL Ltd. and Another

APPELLANT

Vs

R. Sudhakar and Another

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 A

Citation : (2002) ILR (Kar) 119 : (2002) 4 LLJ 168

Hon'ble Judges : Chandrashekaraiyah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chandrashekaraiyah, J.—Petitioners, in all the petitions have challenged the validity of Section 33-A of the Industrial Disputes Act. But at the time of argument the petitioners have given up their challenge to the validity of Section 33-A of the Industrial Disputes Act (hereinafter referred to as Act), Hence, the validity of Section 33-A has not been considered in these petitions.

2. In all these Writ Petitions the petitioner-Management contended that the application filed u/s 33-A of the Act before the Tribunal is not maintainable.

3. The facts in these cases are that respondents-workmen made applications u/s 33-A of the Act alleging contravention of Section 33 of the Act. The, petitioner-Management filed objections to the said complaint contending that the order of dismissal passed by the Management not during the pendency of any dispute pending before the Industrial Tribunal and therefore the, application filed by the workmen u/s 33-A is not maintainable in law.

4. Sri Kasturi, learned senior counsel appearing for the petitioner submitted that when once an order of reference, referring the dispute in I.D. No. 19/1999 has been stayed by the Court, no proceedings could be said to be open before the Industrial Tribunal and therefore, the action taken by the Management in dismissing its employees cannot be said to be in contravention of Section 33 of

the Act in order to invoke Section 33-A of the Act.

5. In order to consider the rival contentions, it is just and necessary to consider whether the order of stay of reference in I.D. No. 19/1999 by the High Court which was in force as on the date of the dismissal of the workmen be considered as one of wiping out the proceedings on the file of the Industrial Tribunal.

6. It is an admitted fact that on the charter of demands made by the workmen, the State Government referred the dispute to the Industrial Tribunal in I.D. No. 19/1999. This order of reference by the State Government has been stayed by this Court in the Writ Petition filed by the Management. It is an admitted fact that as on the date the employees were dismissed, the order of stay, staying the reference was in force. Mere stay, staying the order of reference by this Court does not amount to taking away the effect of the reference and at best it can be construed as stay of further proceedings pursuant to the order of reference by the Industrial Tribunal. Supreme Court in the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, has held as follows:

"In the instant case the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company u/s 25 of the Act against the said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means, that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order the

order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was opening before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant company against the order of the learned single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant company. The said appeal, therefore, fails and is liable to be dismissed."

In the above said case, the Supreme Court has clarified what is the effect of quashing of the order, stay of the order and stay of the further proceedings. As per the above said ruling, mere stay of operation of the impugned order could not be construed as quashing of the proceedings and at best it can be said it will not be operating from the date of the order of stay and it does not amount to wiping out the proceedings on the file of the Tribunal. Therefore, I am of the considered view that mere order of stay of reference by this Court in a Writ Petition does not amount to quashing of the proceedings in entirety and on the other hand the proceedings are continued to be pending on the file of the Tribunal until they are quashed or set aside.

7. Now prima facie, the Industrial Tribunal has come to the conclusion that the Management has contravened Section 33 of the Act. The cause of action to maintain the complaint is contravention of Section 33. Therefore, I am of the considered view that the Labour Court is justified in holding that the applications filed by the respondent workmen u/s 33-A of the Act are maintainable in law. Hence, the following order:

Writ Petitions are rejected.