

(2004) 12 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) No. 12602 of 2004 and CM No's. 9264, 10916 and 13785/04

Container Corporation of India Ltd.

APPELLANT

Vs

Shri Sanjeev Kumar

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Industrial Disputes Act, 1947 — Section 17B, 18, 33, 33(2)

Citation : (2005) 80 DRJ 496

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Rajendra Dhawan and Shafali Dhawan, for the Appellant; Party-in-Person, for the Respondent

Judgement

Swatanter Kumar, J.—The respondent workman, who appeared in person, prayed that the application u/s 17-B of the Industrial Disputes Act for grant of wages during the pendency of the petition be heard at the first instance and thereafter alone the writ petition should be heard. He relied upon the judgment of the Supreme Court in the case of Workman represented by Workmen Represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and Others, . On the other hand, the learned counsel appearing for the petitioner management had contended, today as well as on previous occasions, while relying upon the judgment of the Supreme Court in The Tata Iron and Steel Co. Ltd. Vs. D.R. Singh, , that the application filed by the management u/s 33(2)(b) without prejudice to its rights and contentions could not be rejected by the Tribunal as not maintainable. It is further contended that wherever an application u/s 33(2)(b) is rejected and the management prefers a writ petition before the High Court, the provisions of Section 17-B of the Act are not attracted. On 10.11.2004, after hearing learned counsel for the parties for some time, the Court passed the following order :

"Vide order dated 26th October, 2004 a sum of Rs. 5,000/- was directed to be

paid to the respondent workman and it was directed that he shall also file counter affidavit to the main writ petition within two weeks. Despite the fact that the costs have been paid, no counter affidavit has been filed.

Respondent had accepted notice on 2nd August, 2004 and the matter was listed for further proceedings before the Registrar. Thereafter the workman has filed an application u/s 17B of the Industrial Disputes Act (hereinafter referred to as Act). The said application was also ordered to be listed before the Registrar (Protocol) for completion of pleadings. On 5th October, 2004 the workman had sought further time to file counter affidavit and 4 weeks time was allowed to him. He did not file counter affidavit despite the opportunity given.

Today, the respondent contends that application u/s 17-B of the Act should be decided first then alone he will file counter affidavit to the writ petition. In the facts and circumstances of this case I find this request is most unreasonable. The management had filed an application u/s 33(2)(b) of the Act seeking approval of its action of dismissing the petitioner from service. However, this application was filed with a specific objection that as such the provisions of Section 33(e) would not be attracted. Vide order dated 7th July, 2004 without inviting reply to the said application the learned Presiding Officer, Industrial Tribunal dismissed this application pleading as not in consonance with the provisions of the Act. Counsel for the petitioner relies upon the judgment of the Supreme Court in Tata Iron and Steel Company Ltd. v. D.R. Singh AIR 1966 288. One of the pleas raised, even while arguments were being heard on the application u/s 17B of the Act, is that the provisions of Section 17B of the Act would not be applicable to the writ petition filed against dismissal of an application u/s 33(2)(b) of the Act, particularly with reference to the facts of the present case.

It would be in the interest of justice that both these matters are heard together. In view of above, the respondent workman prays for further time to file counter affidavit. Last and final opportunity granted to file counter affidavit. Counter affidavit be filed within one week from today with advance copy to the counsel for the petitioner. List this petition Along with application u/s 17B of the Act for final disposal on 29th November, 2004."

2. As the workman has been paid Rs. 5,000/- on account of litigation expenses despite the fact that he was arguing in person and further keeping in mind that the question agitated by the counsel for the parties in regard to application under provisions of Section 17-B of the Act has been referred to a Larger Bench in WP(C) No. 3871/2000 vide order dated 9.4.2003, I had decided to hear the main petition itself on merits.

3. Consequently, the matter was listed for final disposal on 30.11.2004. Container Corporation of India Ltd., a public limited company incorporated under the provisions of the Companies Act and a government owned company had not implemented certain beneficial provisions including grant of ex-gratia payment of Rs. 6,000/- to the workman. The large number of workmen had raised an

industrial dispute being ID No. 22 of 2000 which was referred to the Industrial Tribunal-II, Delhi and the order of reference reads as under :

"whether the workman shown in Annexure `A' are entitled for ex-gratia payment of Rs. 6,000/- (six thousand only) and if so, what directions are necessary in this respect."

4. The workman Sanjeev Kumar who was employed as a Senior Assistant at the relevant time with the petitioner company and was posted at ICD Tughlakabad, New Delhi with effect from 20.7.2002, was transferred to ICD Dhandari Kalan (Ludhiana), he failed to join as he was absconding and during the interregnum period he was also allegedly arrested by the police on 18.8.1998 to 19.8.1999 and also remained in judicial custody from 20.8.1998 to 5.9.1998. The Corporation served a charge-sheet upon the workman on 25.2.1999. After conducting the enquiry the disciplinary authority accepted the report of the enquiry officer in regard to article of charges 2 to 4 but disagree with article of charge No. 1 holding that all charges were proved. The workman was granted personal hearing on 26.5.2003. Order dated 26.3.2004 removing the petitioner from service was passed. The management thereafter filed an application u/s 33(2)(b) of the Industrial Disputes Act seeking approval of its action and also sent a sum of Rs. 9,968/- one month's wages to the account of the workman in the bank. The said application of the management came up for scrutiny before the Industrial Tribunal on 26.3.2004 when the following order was passed :

"Approval application filed by the management today. It be checked and registered. Issue notice to the respondent for 27.4.2004."

5. On 27.4.2004, the following order was passed:

Shri B.S. Rana, AR(A)

Shri S.K. Ranga, AR(R) General Secretary of workman union.

Copy of application u/s 33(2)(b) of the ID Act supplied to the respondent.

On the request of the respondent case is adjourned to 7.7.2004 for the reply of the respondent."

6. As is clear the matter was listed before the Tribunal on 7.7.2004 when the said application was dismissed by the Tribunal by passing the following order :

"Present :Sh. B.S. Rana, AR of applicant.

Respondent in person.

I have heard the parties. Para 32 of the application reads as under :

"That this application is being made as a matter of abundant precaution and without prejudice to the contention of the management that respondent Shri Sanjeev Kumar is not a concerned workman in the dispute viz. ID No. 22 of 2002, referred to above."

As per the provision of Section 33(2)(b) of ID Act, the management/employer can move the application u/s 33(2)(b) of ID Act in case of concerned workman to the pending industrial dispute. The perusal of application show the want of the essential condition and pleading that respondent is workman concerned to the industrial dispute bearing ID No. 22 of 2002. Admittedly, the reference has been made with regard to 74 persons to which respondent has not been shown party to industrial dispute bearing ID No. 22 of 2002. Consequently, I am of the considered opinion that the application is not maintainable for want of necessary pleadings i.e. The respondent is workman concerned to the pending industrial dispute bearing ID No. 22 of 2002. Consequently, the application is hereby dismissed.

File be consigned to record room.

PO IT-II/7.7.2004"

7. The above order is challenged by the petitioner inter alias on the following grounds :

(i) The order passed by the Tribunal is contrary to the law enunciated by the Supreme Court in New India Motors (P) Ltd. New Delhi Vs. K.T. Morris,

(ii) The order has been passed in, an undue haste and violation of principles of natural justice. Even the request of the management for grant of adjournment to argue the matter was declined.

(iii) The order has the effect of determining the merits of the controversy without permitting the parties to complete their pleadings and lead evidence and if necessary even by framing of preliminary issue.

8. From the above referred orders passed by the Industrial Tribunal during the period of 26.3.2004 to 7.7.2004 it is clear that the application was duly registered and the workman was called upon to file reply to the petition u/s 33(2) (b) of the Act. However, on 7.7.2004 without taking any reply from the workman, the application was dismissed vide impugned order dated 7.7.2004. If the Industrial Tribunal intended to reject the petition as not maintainable then it ought to have taken into consideration the averments made in the petition in its entirety. For applying the principle of demurer, the facts averred in the petition must be taken to be correct. If the entire petition is taken together it is clear that the petition u/s 33(2)(b) was being filed in ID No. 22/2002, a pending dispute before the Tribunal. Whether the workman was a party to that dispute or not? Whether the workman is a "workman concerned" in view of the law enunciated in the above judgment was a question which could be gone into by the Industrial Tribunal only after inviting reply on facts and if necessary permitting the parties to lead evidence may be even by framing a preliminary issue. There was no denial of the averments made in the petition what weighed with the Labour Court in assuming that averments made in the petition u/s 33(2)(b) of the Act were factually incorrect, is not clear from the impugned order. Even if for the sake of

arguments it is argued that the provisions of Order 7 Rule 11 of the CPC could be strictly made applicable to the proceedings under the Act even then the facts averred in the petition had to be taken as correct. In view of the undisputed facts stated in the application, it is difficult for the Court to come to the conclusion that ingredients of the relevant provisions is not sustainable. In ID No. 22/2002, 74 persons were shown to be parties to the dispute wherein relief in relation to grant of ex-gratia payment of Rs. 6,000/- was claimed. It was also prayed that appropriate directions be issued in that regard. In these proceedings the management had filed a petition u/s 33(2)(b) of the Act without prejudice to its contentions including that Sanjeev Kumar is not a 'workman concerned'.

9. It is a settled principle of law that a party can file a petition without prejudice to its rights and contentions including that it was complying with the statutory requirements as an abundant caution. This per se cannot be stated to be a frivolous litigation liable to be rejected at a very threshold. It is for the forum or court to apply its mind and come to an appropriate conclusion in accordance with law, if necessary, after inviting reply from the other side. The Industrial Tribunal would have to refer a finding whether the workman was or was not 'workman concerned' as he was directly involved in the industrial dispute or was otherwise effected by the proceedings in the industrial dispute. It would also have to determine whether the petition u/s 33(2)(b) of the Act was not filed in a correct ID admittedly pending between the workman and the management. After applying its mind to these various aspects, the Tribunal will have to pass an order in accordance with law.

10. In D.R.Singh" case (supra), the Supreme Court held that employer could make an application u/s 33(2)(b) without prejudice to his case that Section 33 did not apply. The question about the construction of the issues "a workman concerned in such dispute" appearing in these provisions would include a present party to the dispute or a person who would be effected by such an award. In the case of K.T. Morris (supra) the Supreme Court further held as under :

"In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union, then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out, this construction is harmonious with the definition prescribed by S.2(s) and with the provisions contained in S.18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute", can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute."

11. The respondent workman, who appears in person placed reliance upon the

Division Bench's judgment of the Rajasthan High court in the case of Rajasthan State Road Transport Corporation and another v. Judge, Industrial Tribunal-I, Jaipur and another, 1986 .I.C. 291, to contend that before the Tribunal accords approval it must consider whether the application is in proper format, as envisaged in proviso to section 33(2)(b) of the Act or not, and the application must comply with the conditions stated in the Section. He also relied upon the judgment of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , where their Lordships held that in the event approval is not granted by the Tribunal u/s 33(2)(b) of the Act the order of dismissal becomes ineffective, from the date it is passed. The principle of law enunciated in either of these two judgments cannot be disputed. I have already noticed that the Industrial Tribunal erred in law in not reading the application as a whole including the fact that it was moved in ID No. 22 of 2002. The mere fact that application was filed without prejudice to the contentions of the management would not per se be a sufficient ground for dismissing the application as not maintainable and for the reason that it does not comply with the requirements of the relevant provisions of the Act. Another factor which has to be noticed by the Court is that the workman in his counter affidavit filed before this Court has himself taken a stand contrary to the findings recorded by the Tribunal. In reply to para 2 of the writ petition the workman has stated that there are 3 industrial dispute references pending before the Labour Courts i.e. ID No. 22/2002, ID No. 23/2003 and ID No. 160/1999. He claims that he is not a concerned workman in ID No. 22/2002 and ID No. 23/2003 while in ID No. 160/1999 he had conceded even in Court that he is a party to that dispute. These facts have been noticed by me only to indicate that the order of the Industrial Tribunal dated 7.7.2004 was not called for in the facts and circumstances of the case at this stage. If the Tribunal was of the opinion that the issue of maintainability should be dealt with initially, it ought to have granted opportunity to the parties to lead evidence after permitting them to complete their pleadings and then passed appropriate orders.

12. For the reasons afore-stated I allow this petition and set aside the order dated 7.7.2004 and remand the matter to the Industrial Tribunal. It will be for the Industrial Tribunal to proceed with the matter in accordance with law. Needless to point out that in its own discretion the Tribunal would be at liberty to frame a preliminary issue in regard to the maintainability of the application u/s 33(2)(b) of the Act. It is expected that the petition would be dealt with and disposed of by the Industrial Tribunal as expeditiously as possible.

13. The writ petition is allowed to the limited extent afore-indicated while leaving the parties to bear their own costs.