
(2006) 09 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 18207 of 2006

Dakor Temple Committee

APPELLANT

Vs

Gujarat Kamdar Mandal

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes (Amendment) Act, 1958 — Section 109, 18, 21

Industrial Disputes Act, 1947 — Section 10(1), 10(4), 2, 33, 33(1)

Citation : (2006) 09 GUJ CK 0042

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—The petitioner is a Dakor Temple Committee. The petitioner has challenged the interim order passed by Industrial Tribunal, Nadiad dated 11.8.2006 in Complaint (IT) No. 9 of 2005. The Industrial Tribunal has directed, to petitioner that during the pendency of complaint u/s 33A, to continue the interim relief which was granted by Industrial Tribunal on 28.12.2005 till the complaint is decided by Industrial Tribunal.

2. Learned Advocate, Mr. Clerk, appearing on behalf of petitioner, made following submissions relying upon the decision in support of his submissions.

i) The petitioner is not an "industry" as defined in Section 2(j) of the Industrial Disputes Act and therefore, the Industrial Tribunal has no jurisdiction to entertain and decide the complaint itself. SCA 9221 of 2004 dt. 17.2.2005.

ii) By the impugned order, the Tribunal has granted final relief at interim stage which cannot be granted. 2000-7-SCC-521, AIR-95-SC-1368, 95-Supp(2)-SCC-593, 960-1-SCC-681 and 2003-6-SCC-65.

iii) The Tribunal could not have granted stay of termination of the concerned

persons. 2003-4-SCC-104,39-2-GLR-1487, 2005-3-GLH-85,2002-1-GLH-443.

iv) The Tribunal could not have passed the mandatory order of staying the termination of concerned persons particularly when the contract of the contractor came to an end on 31.12.2005 and there is no new contractor after 31.12.2005.

v) The Tribunal could not have passed mandatory interim order which amounts to allowing the complaint at interim stage.

vi) The Tribunal erred in ignoring that there was no employer-employee relationship or privity of contract between the petitioner and the concerned persons as they were employed by the contractor and therefore, the interim order could not have been passed against the petitioner.

vii) The Tribunal erred in ignoring that the petitioner did not require the services of these persons in view of the special arrangement made by the State of Gujarat for important religious places after the incident which occurred at Akshardham, Gandhinagar.

viii) The Tribunal erred in ignoring that the petitioner is saddled with unnecessary financial burden as the petitioner does not require any persons for security and therefore, no new contract is given after 31.12.2005.

ix) The Tribunal erred in ignoring that in the absence of the contractor, after 31.12.2005 the petitioner cannot be compelled to engage the concerned persons as they were never employed by the petitioner, when contractor is also not a party.

x) The Tribunal erred in ignoring that passing of the impugned order amounts to granting of relief of reinstatement at interim stage. AIR-61-SC-689.

3. I have considered the submissions made by learned Advocate, Mr. Clerk and also considered the decisions referred to by learned Advocate, Mr. Clerk. I have also perused the order passed by Industrial Tribunal, Nadiad in Complaint No. 9 of 2005. The Reference (IT) Demand No. 51 of 2005 is in respect to demand raised by Union by Demand Notice dated 25.3.2003 for wage revision and other general demand of employees of petitioner. The charter of demand wherein revised scale in respect to different category and other service benefits are demanded by Union. This demand is referred for adjudication to the Industrial Tribunal, Nadiad being Reference (IT) No. 51 of 2005. During the pendency of this reference, the workmen those who have filed complaint u/s 33A of the I.D. Act, 1947 are concerned workmen of the pending reference. Therefore, they filed complaint with interim relief application not to terminate the service of concerned workmen those who have filed complaint during the pendency of reference. The complaint was filed on 28.12.2005 by authorized representative of the workmen. Along with complaint, interim relief application was also filed on the same day. The Industrial Tribunal has granted ad-interim relief on 28.12.2005. Vide Exh.9 written statement was filed by petitioner raising certain contentions that petitioner is not an "industry" and these are the workmen who are not concerned

with pending reference and no breach has been committed by petitioner of Section 33 of the I.D. Act, 1947. The authority of Union Secretary has been challenged and these complainants were working with the contractor, whose contract was over on 31.12.2005. Thereafter, no other contractor has been appointed by petitioner and therefore complaint has to be dismissed. The petitioner has also pointed out in the written statement that they do not have any requirement in light of the special security arrangement made by the State Government in respect to other religious temples. The reply is also filed against the interim application by the petitioner. Thereafter, the Tribunal has examined the matter and come to the conclusion that whatever the contentions raised by petitioner before the Tribunal are mixed question of facts and law, same requires evidence as they are disputed question of facts and, therefore, at this stage, while examining the interim relief application, same should not have to be decided and that has to be decided at the time of final adjudication of the complaint and reference. The Industrial Tribunal has considered that during the pendency of reference of question in respect of better condition of service, if service of concerned complaints are terminated, then, reference become meaningless or infructuous so far it concerned to complainants. The Tribunal has also considered the decision of this Court reported in 2005 LLR 168 and in SCA No. 5122 of 2004 and other relevant decisions. Ultimately, the Tribunal has considered that initially status-quo order passed by Industrial Tribunal on 28.12.2005 which remain continued for a further period of about more than 7 months and considering the important fact that on 22.7.2005, petitioner has invited tender for giving new contract for security staff. The Industrial Tribunal has considered the decision of this Court in SCA No. 4406 of 2005 and 4422 of 2006. After considering this, the Tribunal has continued the interim order which was passed on 28.12.2005 till the complaint is finally decided by the Tribunal. This order has been passed on 11.8.2006.

4. After considering the contentions raised by learned Advocate, Mr. Clerk and relying upon the decision and after perusing the reasoning given by the Industrial Tribunal, Nadiad, according to my opinion, once the industrial dispute is pending in respect to better condition of service and complainants are concerned workmen in the pending reference, then, it is a duty of petitioner to maintain status-quo u/s 33 of the I.D. Act, 1947. The mandate of Section 33 suggests that during the pendency of dispute, employer should have to maintain status-quo, not to alter the condition of service, prejudice to the concerned workmen without prior permission from the concerned Tribunal / Labour Court. Therefore, the petitioners have right / opportunity to ask for permission if they are able to justify that service of these workmen are not necessary / useful in the Institution of petitioner. But, without prior permission, u/s 33(1)(a) of the I.D. Act, 1947, the petitioner cannot alter the service condition or status-quo in respect to the complainant, those who are concerned workmen in pending reference without prior permission of Tribunal. (See : The Bhavnagar Municipality Vs. Alibhai Karimbhai and Others, . This being a statutory mandate to maintain

status-quo during the pendency of reference which has been extended by Industrial Tribunal by its judicial order upto final adjudication of complaint u/s 33A of the I.D. Act, 1947. The contention raised in the written statement against the complaints and written statement against the interim relief application by petitioner are mixed question of facts and law which require evidence. Therefore, the Industrial Tribunal has rightly observed that it requires evidence from respective parties and, therefore, same should have to be examined at the time of final adjudication of the complaint. The Industrial Tribunal has power and jurisdiction to grant interim relief u/s 10(4) of the I.D. Act, 1947 as well as inherent powers, as has been considered by Apex Court and various High Courts (See : 1991 II CLR 726 Bombay, 1997 I CLR 212 Bombay, 1993 II LLJ 1 State of Maharashtra and others Vs. Admane Anita Moti and others, : AIR1995SC350 Bombay, 1981 I LLJ 327 SC, 1999 83 FLR 1078 Calcutta).

5. The Industrial Tribunal has jurisdiction to pass interim order in complaint u/s 33A of the I.D. Act, 1947. Looking to the provisions of Section 33A of the I.D. Act, 1947 it should have to be considered a reference as if made by appropriate Government u/s 10(1) of the I.D. Act, 1947. During the pendency of charter of demand wherein complainants are concerned workmen, the petitioner should not have to make any change or alteration of condition of service prejudice to service condition of workmen without prior permission of Industrial Tribunal. The Apex Court has considered the object of Section 33 of the I.D. Act, 1947 during the pendency of reference of charter of demand for better condition of service in case of P.D. Sharma Vs. State Bank of India, . Relevant observations are in Para.13 which is quoted as under:

13. By enacting S. 33 the Parliament wanted to ensure a fair and satisfactory enquiry of an industrial dispute undisturbed by any action on the part of the employer which could create fresh cause for disharmony between him and his employees. The object of S. 33 is that during the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. But then distinction was made between matters connected with the industrial dispute and those unconnected with it.

5.1. Similarly, a well known decision of Apex Court in case of The Bhavnagar Municipality Vs. Alibhai Karimbhai and Others, . Relevant Para. 10 to 14 are quoted as under:

10. In order to attract Section 33(1)(a), the following features must be present;

- (1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.
- (2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.
- (3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen.

11. The first feature is admittedly present in this case since action has been taken by the appellant in retrenching the respondents during the pendency of the proceeding before the Tribunal. The point that requires consideration is whether the other features are also present in the instant case.

12. Before we proceed further we should direct our attention to the subject-matter of the industrial dispute pending before the Tribunal. It is sufficient to take note of the principal item of the dispute, namely, the demand of the respondents for conversion of the temporary status of their employment into permanent. To recapitulate briefly the appellant employed daily rated workers to do the work of boring and hand pumps in its Water Works Section. These workers have been in employment for over a year. They claimed permanency in their employment on their putting in more than 90 days' service. They also demanded two pairs of uniform every year, cycle allowance at the rate of Rupees 10/- per month. Provident Fund benefit and National Holidays and other holidays allowed to the other workers. While this particular dispute was pending before the Tribunal, the appellant decided to entrust the work, which had till then been performed by these workers in the Water Works Section, to a contractor. On the employment of the contractor by the Municipality for the self-same work, the services of the respondents became unnecessary and the appellant passed the orders of retrenchment. It is, therefore, clear that by retrenchment of the respondents even the temporary employment of the workers ceased while their dispute before the Tribunal was pending in order to improve that temporary and insecure status.

13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject-matter being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the

temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute.

14. The character of the temporary employment of the respondents being a direct issue before the Tribunal is that condition of employment, however insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the status quo under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of Section 33(1)(a) of the Act and the complaint u/s 33A, at the instance of the respondents, is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted.

5.2 The interim relief was in operation from 28.12.2005 merely directing the petitioner to maintain status-quo remain continued for a period of about 8 months but, no sincere efforts have been made by petitioner to get it vacated such ex-parte ad-interim order or not to challenge the same before higher forum. However, the petitioner is having alternative remedy by filing necessary application u/s 33 of the I.D. Act, 1947 for prior permission to terminate the service of such workmen. So that Tribunal can examine as to whether permission should have to be accorded or not and also the genuineness and bona fide of the petitioner. If petitioner can wait for some time, then, main reference can be disposed of within some specified period. From 31.12.2005, contractor is not at all in picture, even though workmen are working with the petitioner and no complaint is made against any of the workmen by the petitioner, then to wait for some reasonable time by religious trust will not make much financial burden upon the petitioner. The Industrial Tribunal has not examined the preliminary contention raised by petitioner only on the ground that it requires oral as well as documentary evidence on record. Normally, preliminary contention should not have to be entertained by Industrial Tribunal, otherwise it amounts to delaying tactics adopted by employer raising such preliminary contention to divert the main issue, which is yet to be adjudicated by Industrial Tribunal (See : 1983 II LLJ 425 SC, D.P.Maheshwari case, 1983 II LLJ 429 SC, S.K.Varma case, 1984 Lab I.C. 276 Hindustan Liver case and 1996 II LLJ 125 SC, held that it is discretionary power of Labour Court to decide preliminary point or not).

5.3 In view of the aforesaid decision, merely raising preliminary point, still industrial dispute is to be adjudicated by Industrial Tribunal which amounts to

avoiding adjudication on main issue impliedly delaying tactics adopted by petitioner Trust. Therefore, the Industrial Tribunal has rightly not examined the preliminary issue while considering the interim relief application filed by respondents. The Industrial Tribunal has given cogent and convincing reasons while dealing with interim relief application. The Industrial Tribunal has jurisdiction u/s 10(4) of the I.D. Act, 1947 to pass appropriate order in respect to ancillary and incidental matter. If the service of concerned workman is terminated, then, whole purpose of mandate of Section 33 of the I.D. Act, 1947 will be frustrated. Legislature by enacting Section 33 directed to employer to maintain status-quo if any alteration is necessary, the remedy is provided to obtain prior permission from the concerned Tribunal. So, both the way protection / remedy is available to respective parties of the industrial dispute. The petitioner can approach before the Tribunal if petitioner intends to terminate the service of any concerned workman for obtaining prior permission from concerned Industrial Tribunal. So Legislature has sufficiently safeguarded the interest of both, employer and workmen.

6. By interim order dated 11.8.2006 which was continued w.e.f. 28.12.2005, this being not an order of reinstatement and an order of full relief granted by Tribunal in light of the complaint u/s 33A of the I.D. Act, 1947 and Industrial tribunal has jurisdiction to protect the interest / service condition of the workmen concerned in pending dispute, therefore, the decision which has been relied upon by learned Advocate, Mr. Clerk, that Industrial Tribunal has no jurisdiction cannot be accepted in light of the fact that Section 33A of the I.D. Act, 1947, the complaint has to be considered as good as reference. Therefore, the Industrial Tribunal, while dealing with interim relief application, can exercise the power u/s 10(4) of the I.D. Act, 1947 being ancillary / incidental matter to the main dispute. Therefore, according to my opinion, the Tribunal has jurisdiction to protect the service condition of the workmen concerned during the pendency of reference. The said interim order cannot be considered as staying the termination of concerned workmen because they were remained in service continuously with the petitioner on the basis of interim order passed by Industrial Tribunal on 28.12.2005. There was no termination order passed by petitioner against any of the complainants and it is not the case of petitioner that termination order was passed against concerned complainants. The contractor is not necessary to be joined as a party because his contract is over according to petitioner w.e.f. 31.12.2005. Therefore, according to my opinion, considering the reasoning given by Industrial Tribunal protecting the service condition of concerned complainants during the pendency of complaint as well as pending of reference, the Industrial Tribunal has not committed any error while passing such order dated 11.8.2006 which requires any interference by this Court under Article 227 of the Constitution of India. (See : Indian Overseas Bank v. I.O.B. Staff Canteen Workers" Union reported in AIR 2000 SC 1508, Para.19).

7. In similar circumstances, in respect to contract employees, this Court has considered in a direct petition before this Court protecting service of the

contractor employees till the reference is made to the concerned Industrial Tribunal in case of Baraiya Vallabhbai Odhavjibhai and 21 Ors. v. Central Salt and Marine Chemicals Research Institute and Anr. reported in 2006 2 CLR 1057. This Court has considered the decision of this Court in case of Food Corporation of India Workers" Union v. Food Corporation of India reported in 2002 2 CLR 232. The decision of Food Corporation of India (supra) wherein similar circumstances, this Court has granted interim relief in a direct petition protecting the service condition of contractor employees. This Court has protected till the reference is made to the Industrial Tribunal on the ground that if the service condition is not protected by the Court, then, ultimate reference become meaningless / useless. The decision in case of Food Corporation of India, as referred above, was challenged before the Division Bench of this Court, wherein, LPA has been dismissed which has been challenged before the Apex Court. The Apex Court has also dismissed the SLP filed by corporation. The relevant observations made by this Court in Para.4 is quoted as under:

4. I have considered the submissions made by both the learned Advocates and have also perused the petitions along with all annexures attached to the petitions as well as reply and rejoinder submitted by respective parties. The contention raised by learned Advocate, Mr. Sanjanwala, that petitions are not maintainable as petitioners having alternative remedy to approach under the machinery of I.D. Act, 1947. That view has been taken by the Apex Court in the case of A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, in case of New Okhla Industrial Development Authority Vs. Kendriya Karamchari Sahkari Grih Nirman Samiti, The law examined by Apex Court on this subject that if petitioner having alternative remedy and the disputed question of fact require to be decided by the High Court, the High Court should not entertain such petition while exercising extraordinary jurisdiction under Article 226 of the Constitution of India. However, in this case, petitioners have already availed the alternative industrial forum by raising the dispute through union on 1.7.2006. Therefore, the question is, whether during the pendency of the conciliation proceedings or pending proceedings before the appropriate Government, ad-interim relief granted by this Court is required to be continued or not. In similar situation, this Court has examined the issue in the case of Food Corporation of India Workers" Union v. Food Corporation of India 2001 1 GLH 90. This Court has, in detailed, examined the entire issue and ultimately, directed to the concerned appropriate Government to initiate the conciliation proceedings and to pass appropriate orders within some reasonable time and meanwhile, protection was granted by this Court in the aforesaid decision. That decision was challenged in Letters Patent Appeal No. 447 of 2001. The LPA Bench has decided the matter on 20.6.2001 and dismissed the LPA and confirmed the order passed by this Court. Thereafter, the order of LPA Bench was challenged before the Apex Court in Special Leave to Appeal (Civil) No. 18574 of 2001. The Apex Court has also dismissed the SLP on 14.2.2003. Meaning thereby that in identical case, a contract labourer directly approached to this Court through Union, raised the

dispute and this Court has meanwhile protected. Therefore, considering the aforesaid decision of this Court, the decision of LPA Bench and the decision of the Apex Court, similar order is required to be passed in these petitions.

8. Apart from this fact, this being an interlocutory order passed by Industrial Tribunal on 11.8.2006 without deciding any issue raised by respective parties, there is no merit/lis decided by Industrial Tribunal between the parties. No merits have been examined by Industrial Tribunal. All the contentions which have been raised by petitioners are decided to be adjudicated at the time of final decision in complaint u/s 33A of the I.D. Act, 1947. Therefore, being an interlocutory order, though prima facie Industrial Tribunal has not committed any error while granting interim relief protecting the service by way of status-quo not to terminate the service of concerned complainants, has not committed any error and considering the decision of this Court in case of Cadila Healthcare Ltd. v. Union of India reported 1998 (2) GLH 513. The relevant discussion in Para.9, 10 and 11 are quoted as under:

9. This petition has been filed by the petitioner under Article 226 of the Constitution of India. Speaking for the Division Bench of this Court, Mr. Justice K.G. Balakrishnan, in the case of Chhagan Ranchod Kukava v. General Manager, Western Railway, Bombay and Anr. reported in 1998(1) GLH 461, observed that an order passed by the Tribunal can be challenged under Articles 226 or 227 of the Constitution of India only if there is a jurisdictional error or procedural error apparent on the face of the record. Under the impugned interlocutory order, the respondent No. 2 has decided that it is not the case where the opposition of the respondent No. 3 should be deemed to have been abandoned. So, the matter has not been decided finally. Only the action of respondent No. 2 taking on record of these proceedings, the evidence filed by respondent No. 3 has been held to be justified. That evidence has been taken on record by extending the period of filing evidence and the petitioner has been given opportunity to produce its evidence in support of its application. So by this impugned order, the proceedings are not finally culminated in favour of the respondent No. 3. The matter has to be decided on merits. An interlocutory order is always subject to challenge after the proceedings in which it has been passed are finally terminated while challenging the final order passed by the authority before the appropriate forum. One of the cardinal principles of exercising extra ordinary powers by this Court under Article 226 of the Constitution is that even if the order impugned in the writ petition appears to be illegal, in case it does not result in failure of justice to the party concerned or in denial of any right of challenging the same, this Court will not interfere in the matter under Article 226 of the Constitution of India. A reference in this respect may have to be made to the two decisions of the Apex Court in the case of A.M. Allison v. B.L. Sen reported in AIR 1958 SC 227 and in the case of Balvantrai Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., Ahmedabad Vs. M.N. Nagrashna and Others, . In the present case, if ultimately the matter is decided against the petitioner by the respondent No. 2, then while challenging the final order, the petitioner has all the right to

challenge this interlocutory order also, if it is worthy of challenge, before the appropriate forum available to challenge the final order. Normally, the matters are to be decided on merits by affording to the contesting parties all the opportunities to produce their evidence, but even if it is taken that the respondent No. 3 could not have been permitted to produce evidence in support of its notice of opposition, as what the petitioner contends, still the extension of time granted to respondent No. 3, for filing the evidence, by respondent No. 2 will not result in failure of justice as, as stated earlier, that order is always subject to challenge, but not at this stage. The petitioner has to wait for adjudication of the matter as well as for final termination of proceedings. There are all possibilities that the petitioner may succeed in the case and in that eventuality, there may not be any necessity of challenging this order. This is another point which favours the view which I am taking that against an interlocutory order, normally, the petitions are not maintainable. It is not gainsay that the present problem with the Courts is of heavy pendency of the matters and if the petitions are entertained against interlocutory orders, which can always be challenged while challenging the final orders passed in the proceedings, it will be nothing but only an act of injury which the litigants are suffering on account of delay in disposal of their matters by the Courts. Moreover, nor it can be justified at this stage to challenge this order when it will not result in failure of justice to the petitioner. The petitioner will have all the opportunity to submit its evidence upon the application and still if it feels that this order could not have been passed, it has all the right to challenge the same at the appropriate stage, for which it has to wait till the matter is finally decided.

10. This application of the petitioner has been filed u/s 18 of the Act 1958. On this application, final order has to be passed by respondent No. 2 u/s 21 of the Act 1958 and that may be either the registration as prayed for of the trade mark is granted or it is rejected. u/s 109 of the Act aforesaid, an appeal does lie to this Court within a prescribed period of limitation from any order or decision of Registrar under the Act 1958 or the Rules made thereunder. Where the final order of the authority is appealable, then certainly any interlocutory order passed in the proceedings can be challenged by the aggrieved person in the appeal filed against final order. In such class of cases, challenge to the interlocutory order, normally should not be entertained by this Court, under Article 226 of 227 of the Constitution of India. The party concerned should be asked to first wait for the final adjudication of the matter and still after the termination of the matter finally, if it feels aggrieved of the interlocutory order, then it can be made a ground of challenge in the appeal or any other proceeding provided, while challenging the final order as one of the grounds therein.

11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid, whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi-judicial authority or

administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extra ordinary powers under Article 226 of the Constitution of India, do not permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter is worthy, can be agitated even after final orders are passed. I consider it to be fruitful here to make reference to the decision of the Apex Court in the case of *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, . The Apex Court, in this case, held:

10. In *Management of Ritz Theatre (P) Ltd. Vs. Its Workmen*, this Court was required to deal with a rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this Court made some significant observations:

In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute....

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer: if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence.

9. In view of these facts, according to my opinion, this Court should not have to entertain the petition wherein interlocutory order is challenged. The reason behind is that the proceeding pending before the lower authority will be delayed by higher up proceedings before this Court. Therefore, according to my opinion, this petition is not required to be admitted by this Court on aforesaid reasons and there is no substance in the present petition. The contention raised by petitioner is not accepted which are not relevant at this juncture and therefore this Court has not decided it. Accordingly present petition is dismissed. However, considering anxiety on the part of the petitioner, about financial burden,

according to my opinion, if suitable direction is issued to the Industrial Tribunal to decide the complaint No. 9 of 2005 within a period of six months from the date of receiving the copy of this order after giving reasonable opportunity to the respective parties to lead oral and produce documentary evidence as they require, will meet ends of justice between the parties. However, this Court has not expressed any opinion on the merits of the dispute pending before the Tribunal. Accordingly, present petition is dismissed.