
(1985) 09 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 4832 of 1984

Darshak Limited

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 13-09-1985

Acts Referred:

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

Citation : (1987) ILR (Kar) 50 : (1986) 1 LLJ 253

Hon'ble Judges : Not In Base Journal, J

Bench : Single Bench

Judgement

1. In this petition presented by M/s. Darshak Limited, a public limited company, questioning the legality of an interim order made by the Industrial Tribunal, Bangalore, the following questions of law arise for consideration :

(1) Whether the Industrial Tribunal has the power to grant an interim relief otherwise than by an interim award ?

(2) If so, what is the scope of such power ?

2. The facts of the case, which have given rise to the petition are as follows :

(i) An industrial dispute between the workmen of the petitioner and the petitioner was referred for industrial adjudication by an order made by the State Government under S. 10(1) of the Industrial Disputes Act. One of the points of dispute referred for adjudication was point 19(b). It reads :

"Unit/Factory office bearers should not be transferred under any circumstances."

The above demand has been made by the workers for the reason that the branches of the petitioner are situate in the State of Andhra Pradesh and Kerala. During the pendency of the dispute, 26 workmen were transferred and posted to places in Karnataka, Hyderabad and Kerala. Two of the persons so transferred were M. Raghu and S. Shankaran. They were transferred from Bangalore to Hyderabad and Cochin respectively. Immediately thereafter, on 22nd May, 1985,

an application was filed before the Tribunal praying for staying the operation of the transfer orders. The ground made out in support of the application was that Mr. Raghu was a joint secretary and Shankar was a treasurer of the trade union which had raised the dispute and they were actively participating in the union activities and apart from that, they were the persons who were conducting the case before the Tribunal on behalf of the Union and by their transfer the conduct of the case before the Tribunal would be adversely affected. Objections were filed by the management to the said application contending that the Tribunal had not jurisdiction to grant any such interim order and, in any event, there was no justification for staying the transfers. The Tribunal passed an order on 24th May, 1984, staying the transfers until further orders.

(ii) On 28th May, 1984, the application was taken up for hearing by the Tribunal and was being adjourned. On 17th September, 1984, consent of both the parties was recorded by the Tribunal to the effect that the case be posted for the disposal on 26th September, 1984, and thereafter the case be taken up day-to-day till its completion and in the meanwhile transfers should not be enforced. Somehow the case was not taken up as agreed. Each party accuses that the other side was responsible for not taking up the case. However, the fact remains that, in view of the consent recorded, the two transferred workmen were not relieved.

(iii) On 17th November, 1984, the workmen filed an application alleging that notwithstanding the consent recorded earlier, the two workmen were relieved on 16th November, 1984. On 17th November 1984, the Tribunal made an order directing the petitioner not to relieve the two workmen. Against that order W.P. No. 18558 of 1984 was filed before this Court. The main ground made out in the said writ petition was that, as agreed, the case was not taken up day-to-day and after 26th September, 1984, and, therefore, the consent given was no longer valid and, therefore, the petitioner relieved two workmen on 16th November, 1984, and the Tribunal could not have proceeded to make an order against the petitioner without considering the application for interim relief filed by the workmen and the objection filed by the petitioner thereto on merits. In view of this specific complaint, the writ petition was allowed and a direction was issued to the Tribunal to dispose of the application, I.A. No. 7, on merits.

(iv) The application, I.A. No. 7, was taken up by the Tribunal as directed by this Court in the order made in the aforesaid writ petition. By order dated 8th March, 1985, the Tribunal allowed the application. The operative portion of the order reads :

"21. In the result, I.A. No. 7 is allowed and the II party is hereby directed not to relieve these two workmen until disposal of this dispute and if they have already been relieved and if they have not taken charge at the place of transfer, the said relief order should be withdrawn and allowed them to work in the Bangalore branch. After disposal of dispute subject to the order made on point of dispute No. 19(b), the II party is at liberty to relieve them to the place to which they have been transferred."

Aggrieved by the said order, the petitioner has presented this petition.

3. The plea of the petitioner is as follows : The Tribunal has no jurisdiction to grant any interim relief. In any event, transfer of workmen from one place to another is the prerogative of the management and concerns the internal administration. No Industrial Tribunal or Labour Court can interfere with the said legitimate rights of the management. Even assuming the Tribunal had the power, there was no justification for granting an interim order of the type it had granted.

4. In support of the submission, learned counsel relied on the following decisions :

(i) Judgment of the Supreme court in *The Management of the Syndicate Bank Ltd. Vs. The Workmen*, Relevant portion of the judgment reads :

"..... There is no doubt that the banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch. There is also no doubt that the management of the bank is in the best position to judge how to distribute its employees between the different branches. We are therefore, of opinion that Industrial Tribunal should be very careful before they interfere with the orders made by the banks in discharge of their managerial functions...."

(ii) Judgment of the Kerala High Court in *Dhanalakshmi Bank Ltd. Vs. Parameswara Menon*, Relevant portion of the judgment reads (at p. 47).

"In the present case what the Tribunal was invited by the writ petitioner to grant was an order virtually granting the very relief that had been sought for in the complaint filed under S. 33-A, namely, to prevent the Bank from proceeding to make appointments to the cadre of junior officers by promotion and by direct recruitment. S. 33-A does not, in our opinion, contemplate the grant of such anticipatory relief for prevention of any apprehended contravention of S. 33. If and when it is established before the Tribunal that there has been, in fact, a contravention of S. 33 by the employer, the Tribunal will, in such event, pass appropriate orders granting effective relief to the workmen so as to obliterate the consequences that may have resulted from the act of management performed in contravention of S. 33. It is only to this extent that the jurisdiction of S. 33-A stretches. The grant of an interim relief in the nature of injunction is not within the competence of the Tribunal since no such power has been conferred on it by any of the provisions of the Act...."

He also relied on the following passage of the book "Law on Industrial Disputes" by Vithalbai B. Patel, at page 458. It reads :

"The jurisdiction of a Labour Court or a Tribunal springs from the order of reference and it has to confine its adjudication to the specified industrial dispute and matters incidental thereto. This is beyond doubt on the language of sub-s. (4) itself and the decisions of the Supreme Court. Having regard to the dictionary meaning of the word "incidental", evidently matters which require independent

consideration or treatment and have their own importance cannot be considered "incidental", And there could be no justification for doing something indirectly on the specious plea of "incidental" or "consequential" or in the name of "interim relief", when the scope for granting interim relief is limited to the dispute referred for adjudication and it cannot be the whole relief which may be given as a final relief."

Relying on these authorities, learned counsel contended that there was no power vested in the Tribunal to grant any interim relief and that too interfering with the right of management of an industry.

5. Sri Padke, learned counsel for the workmen, per contra, submitted that the Industrial labour Court had the jurisdiction to make an award regulation any conditions of service of workmen and in doing so, the Industrial Tribunal had the power to create new obligations or alter existing obligations. In support of this he relied on the following decisions :

(i) Judgment of the Federal Court in *Indian in Western India Automobile Association v. Industrial Tribunal, Bombay* [1949 I L.L.J. 245].

(ii) Judgment of the Supreme Court of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi*,

(iii) *Bombay Labour Union Representing The Workmen of International Franchises Pvt. Ltd. Vs. International Franchises Pvt. Ltd.*,

(iv) *The Indian Express Newspapers (Bombay) Pvt. Ltd. and Another Vs. Employees" Union and Others*,

The substance of all these decisions is that the Industrial Tribunal has the power to create new conditions of service or to alter existing conditions of service except those governed by legislation and to decide every dispute and grant any kind of relief for ensuring the avoidance of industrial unrest and for bringing about harmonious relations between employees and employees. As far as these general powers of Industrial Courts are concerned, they are settled beyond doubt.

6. So far as the power of the Tribunal to grant interim relief is concerned, learned counsel for the workmen submitted that it was not res integra as the matter was covered by the judgment of the Supreme Court as early as in the year 1959 in the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union*, at 557-552. He relied on paragraph 21 and 22 of the judgment. They read :

"(21) After a dispute is referred to the Tribunal under S. 10 of the Act, it is enjoined on it by S. 15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate Government. An "award" is defined in S. 2(b) of the Act as meaning "an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto". Where an order referring an industrial dispute has been made specifying the

points of dispute for adjudication, the Tribunal has to confine its adjudication to those points and matters incidental thereto [S. 10(4)]. It is urged on behalf of the appellants that the Tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words "incidental thereto" appearing in S. 10(4). There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a Tribunal for adjudication, the question of granting interim relief till the decision of the Tribunal with respect to the same matter would be a matter incidental thereto under S. 10(4) and need not be specifically referred in terms to the Tribunal. Thus, interim relief where it is admissible can be granted as a matter incidental to the main question referred to the Tribunal without being itself referred in express terms.

(22) The next question is as to how the Tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word "award" shows that it can be either an interim or final determination either of the whole of the dispute referred to the Tribunal or of any question relating thereto. Thus it is open to the Tribunal to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to the tribunal to make an award about some of the matter referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by S. 17. Such awards are, however, not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief on the other hand is granted under the power conferred on the Tribunal under S. 10(4) with respect to the matters incidental to the points of dispute for adjudication." Learned counsel for the petitioner relied on paragraph 23 of the judgment. It reads :

"(23) It is however urged on behalf of the appellants that even if the tribunal has power under S. 10(4) of the Act to grant interim relief of the nature granted in these cases, it can only do so by submitting an award under S. 15 to the appropriate Government. Reference in this connection is this connection is made to Ss. 15, 17 and 17-A of the Act. It is submitted that as soon as the Tribunal makes a determination, whether interim or final, it must submit that determination to the Government which has to publish it as an award under S. 17 and, thereafter, the provisions of S. 17-A will apply. In reply, the respondents rely on a decision of the Labour Appellate Tribunal in *Allen Berry and Co. Ltd. v. Their Workmen* [1951 I L.L.J. 228], where it was held that an interim award had not to be sent like a final award to the Government for publication and that it would take effect from the date of the order. We do not think it necessary to decide for present purposes whether an order granting interim relief of this kind is an award within the meaning of S. 2(b) and must, therefore be published under S. 17. We shall assume that the interim orders passed by the Tribunal on 5th December, 1955, could not be enforced as it was in the nature of an award and

should have been submitted to the Government and published under S. 17 to become enforceable under S. 17-A. It is, however, still open to us to consider whether we should pass an order giving interim relief in view of this alleged technical defect in the order of the Industrial Tribunal. We have the power to grant interim relief in the same manner as the Industrial Tribunal could do and our order need not be sent to Government for publication, for Ss. 15, 17 and 17-A do not apply to the order of this Court..... We, therefore, order accordingly."

Relying on the above paragraph, learned counsel submitted that the power available to the Industrial Tribunal was only to make an interim or final determination of any of the points of dispute or a point incidental thereto and make an interim award and not a power to grant interim relief.

7. I shall now proceed to consider the validity of the rival contentions. In the case of *Hotel Imperial* (supra), the Supreme Court considered the contention as to whether an industrial Tribunal had the power to grant interim relief by way of directing payment of subsistence allowance to a workman in proceeding arising out of a complaint made by him under S. 33-A of the Act complaining that he had been removed from service in violation of S. 33 of the Act which is deemed to be a reference or in a reference in which the point of dispute is about the justification for the removal from service of such workman. In paragraphs 21 and 22, the Supreme Court interpreted the scope of sub-s. (4) of S. 10. The ratio of the aforesaid two paragraphs as to the scope of the power of the Tribunal under sub-s. (4) of S. 20 is as follows :

(i) The Tribunal has the power to make an interim award on a point of dispute referred to it for adjudication or on a matter incidental to the main question. Such an interim award involves the determination of the point of dispute in respect of which an interim award is made in view of the definition of the "award" in S. 2(b) of the Act.

(ii) It has also the power to grant an appropriate interim relief in view of S 10(4) of the Act as a matter incidental to the point of dispute referred for adjudication.

(iii) The interim relief which could be granted as a matter incidental to the main question is separate and distinct from an interim award, for, in an order granting interim relief, the Tribunal does not make any determination of any point of dispute or a point incidental thereto.

(iv) An interim award incorporates determination of some of the points of dispute, not all, referred for adjudication or of some question incidental thereto and it decides the industrial dispute in part.

However, on the question as to whether interim relief should also, be made in the form of an award, the Supreme Court left the question open as is evident from paragraph 23 of the case of *Hotel Imperial* (supra), extracted earlier.

8. Learned counsel for the petitioner submitted that the Tribunal had no power to make any order interim or final except in the form of an award for, an interim

award, as held by the Supreme Court in paragraph 22 of the of the judgment and having regard to the definition of the word "award" in S. 2(b) of the Act, could only be made on a determination of one or more, but not all the points of dispute referred for adjudication or points incidental thereto. In support of the submission that the Tribunal had no jurisdiction to grant any interim relief otherwise than by an interim award, learned counsel relied on the judgment of the Patna High Court in *The Management of the Bihar State Electricity Board v. The Workmen* [1971 I L.L.J. 389], rendered by Untwalia J. (as he then was). The relevant portion of the judgment reads at p. 393.

"9. On the basis of the decision of the Supreme Court in the case of *Hotel Imperial* (supra). I have to hold that the Tribunal has the power to grant such an interim relief under S. 10(4) of the Act. But it follows that whether such a relief is granted at the time of final adjudication as the final award or is granted by way of a temporary or provisional arrangement during the pendency of the reference case, the order has got to take the form and effect of an interim award under Clause (b) of S. 2 of the Act. There is no provision in the Act empowering the Tribunal to make an order granting relief to the discharged workman except by way of making an interim award which can be made according to the decision of the Supreme Court under S. 10(4) of the Act. or, I should think even apart from that, by the force of the definition of the term "awards. In either case it has got to take the form of an interim award and in that event the Tribunal must determine that there is a good prima facie case in the favour of the workman for final adjudication and, therefore, on the facts of a particular case, granting of interim relief by the interim award is necessary. In the absence of such an adjudication of the kind just indicated by me, the Tribunal is not competent to grant interim relief to the discharge workman."

Learned counsel pointed out that though the question as to whether an interim relief should be granted by means of an interim award or not was left open by the Supreme Court. On the issue the Patna High Court had expressed the view to the effect that interim relief could be granted only in the form of an interim award and persuaded me to take the same view.

9. In order to appreciate the rival contentions, it is necessary to consider the text of S. 10(4) of the Act and the definition of the word "award" as also relevant parts of Ss. 17 and 17A and of S. 29. They read :

"2(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or national Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under S. 10A;"

"10(4). Where in an order referring an industrial dispute to a Labour Court. Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall

confine its adjudication to those points and matters incidental thereto."

"17. Publication of reports and awards - (1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award of a Labour Court, Tribunal or National Tribunal shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of S. 17-A, the award published under sub-s. (1) shall be final and shall not be called in question by any Court in any manner whatsoever."

"17A. Commencement of the award - (1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under S. 17."

"29. Penalty for breach of settlement or award - Any person who commits a breach of any term of any settlement or award, which is binding on him under his Act, shall be punishable with imprisonment for a term which may extend to six months, or with a fine, or with both and where the breach is a continuing one, with a further fine, which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach."

Sub-section (4) of S. 10 restricts the power of the Tribunal to make an award -

(i) to the points of dispute referred for adjudication, and

(ii) the points incidental thereto.

In view of the express language, there can be no doubt that the Tribunal has no power to make any award on a point of dispute not referred for adjudication or on a point which is not incidental to the point of dispute referred for adjudication. The definition of the word "award" and its enunciation by the Supreme Court in paragraph 22 of the judgment in *Hotel Imperial's* case (supra), extracted earlier, unmistakably indicates that whether an award is interim or final, condition precedent for its making is the determination by the tribunal labour Court, as the case may be, of the point of dispute or a point incidental to the point of dispute. It is separate and distinct from an interim order of relief which normally depends upon the balance of convenience and the necessity for granting interim relief as a step in aid to the grant of main relief and does not involve determination of any point of dispute referred for adjudication or a point incidental thereto.

10. Learned counsel for the petitioner submitted that the language of S. 10(4) does not indicate or imply the existence of a power to grant interim relief. In the absence of confirmed of power expressly or by necessary implication, he maintained, a Tribunal has no power to grant any type of interim order. In

support of this submission he relied on the Full Bench judgment of this Court in Lingamma Vs. State of Karnataka, In that case in case the question for consideration was whether the Karnataka Appellant Tribunal, on which power to grant stay in an appeal presented to it was conferred, had also the power to grant any other type of interim relief. The question was answered in the negative. Relevant portion of the judgment reads AIR 1982 Kant 21 :

"5..... An order appointing an interim receiver cannot be regarded as absolutely essential for the discharge of the appellant power. At best, it can be said that it is convenient to have such a power. But as the Supreme Court has pointed out that the power can be implied only if it is absolutely essential for the discharge of the power conferred and not merely because it is convenient to have such a power. So far as granting stay of order appealed against is concerned, the same can be regarded as absolutely essential for the discharge of the power conferred on the appellate authority and so can be implied even in the absence of an express conferment of such a power on the appellant authority. It is not possible to accede to the contention that the Supreme Court has taken the view that conferment of an appellant power implies the power in the appellate authority to make an interim order appointing a receiver....

8. The Karnataka Appellate Tribunal constituted under the Karnataka Appellate Tribunal Act, 1976, has no power to make interim orders like an order appointing a receiver or granting an interim order of injunction in respect of properties in dispute during the pendency of an appeal file under the Karnataka Land Revenue Act."

Relying on the above judgment, learned Counsel argued with great vehemence that where on a point of dispute, or on a point incidental to a point of dispute, power of the Tribunal was confined to the making of a final or interim award and either of the two could be made only on a determination of the concerned point and therefore the Tribunal had no power to make an interim order otherwise than by an award in the absence of conferment of such power.

11. The above decision is of no assistance to the petitioner in view of the judgment of the Supreme Court interpreting S. 10(4) and holding that :

(i) the power to make an interim award on any point of dispute or any point incidental thereto which however could be made only on a determination of the concerned point of dispute, as also

(ii) the power to grant interim relief with respect to matters incidental to the points of dispute referred for adjudication, flows from S. 10(4) of the Act.

The decision of the Full Bench of the Kerala High Court in Dhanalakshmi Bank (supra) is clearly distinguishable. In that case, the interim relief granted restraining the making of promotion to the concerned category was found to be the main relief itself which certainly could not have been granted in the guise of interim relief.

For the aforesaid reasons and in particular in view of the interpretation of S. 10(4) of the Act by the Supreme Court in Hotel Imperial's case (supra), the construction placed by the learned Counsel on S. 10(4) must fail.

12. The next limb of argument of Sri Ullal was that the only manner in which the Tribunal or Labour Court functioning under the Industrial Disputes Act could make an enforceable order was through an award as is evident from Ss. 17 and 17A of the Act and this clearly excludes the possibility of the tribunal labour Court having any power to make an order in the nature of interim relief otherwise than through an interim award, for, an order of the Labour Court is not made enforceable under S. 17 or 17A or any other provisions of the Act. It is exactly for this reason, he maintained, that the Supreme Court declined to decide the question as to whether the interim relief must take the form of an award.

13. I agree with the contention of the petitioner to this extent. i.e. that the interim relief cannot be made in the form of an award, as it would violate the definition of the "award", according to which an award, interim or final, must incorporate a decision on or determination of, the concerned point, i.e. an industrial dispute and in the nature of things, while granting interim relief, the Tribunal cannot embark upon determination of any point of dispute referred for adjudication or of a point incidental thereto which would require the recording of evidence.

14. But from this it does not follow that the Tribunal has no power to grant interim relief, or, if it has, an interim relief so granted is unenforceable. As far as the existence of the power is concerned it cannot be disputed in view of the ratio in Hotel Imperial's case (supra) As far as the enforceability is concerned, it is true that Ss. 17 and 17A speak of enforceability of an award and S. 29 makes disobedience to an award punishable. There is absence of reference to an interim order in all these provisions. Does it mean that the Tribunal has the power to make an interim order granting interim relief, but it is unenforceable and therefore it is left to the sweet will and pleasure of the party against whom it is made either to obey or not to obey ? Such a situation is unknown to law. Indeed there is no difference between a "power" to make an "order" which is unenforceable and absence of power to make such an order. When there is power in law to make an order, it would be enforceable.

15. Though an interim order is not made enforceable under Ss. 17 and 17A and violation of an interim order is also not made punishable under S. 29, there is S. 33C(2) under which an application could be made for computing the benefit flowing from an interim order in terms of money and an order of the Labour Court made on such application is enforceable under S. 33C(1) read with S. 33C(4).

To illustrate :

(i) Take the present case itself. The interim relief granted is a direction to the

petitioner not to enforce the order of transfer and continue the two workmen at Bangalore till the disposal of the dispute. If, in spite of the said order, the petitioner did not take the two workmen on duty, they must be deemed to be on duty and would be entitled to full salary and allowances during the period they were not taken on duty in spite of the interim order and salary for the period has to be and could be computed in terms of money on an application presented by them before the Labour Court under S. 33(C)(2) of the Act.

(ii) Take also a case in which an interim relief is granted by way of issuing a direction to the management concerned to pay a specified part of salary as interim relief to a workmen who is removed from service and whose removal forms the point of dispute for adjudication before the Labour Court or Industrial Tribunal. Such an interim order also does not fall within the meaning of an award for it does not incorporate a determination of any point of dispute or a point of dispute incidental thereto. It is no doubt true that in view of the plea of the management that an interim relief, unless it is in the form of an interim award, cannot be enforced, it has become the practice before the Industrial tribunal labour Court to couch such interim orders in the form of awards and send them to the Government for publication and they are being published. This process itself, which involves delay, is inconsistent with the purpose of interim relief. As pointed out by me earlier, a clear distinction has to be made between an interim relief and an interim award. For these reasons, I respectfully disagree with the view expressed by Untwalia, J., (as he then was) in the case of Bihar Electricity Board (supra) and hold that the interim relief like a direction to pay subsistence allowance to a dismissed workman during the pendency of a dispute concerning the validity of his dismissal, or any other interim relief, which the tribunal labour Court has the power to grant, need not and should not be made in the form of an award. Such orders should be only in the nature of an interim order and such an order is enforceable under S. 33C(1) and wherever necessary after seeking an order under S. 33C(2) of the Industrial Disputes Act.

16. In the light of the discussion as above, my conclusions on the two questions of law arising for consideration in this case, set out in the first paragraph of this order, are :

(1) The Industrial tribunal labour Court has the power to grant interim relief during the pendency of a reference of an industrial dispute made under S. 10(1) of the Industrial Disputes Act.

(2) An interim relief could be granted, if only the interim relief sought for is incidental to any point of dispute and not independent and is a step in aid to the main relief sought for in the reference and if the granting of such interim relief is essential in the interest of justice and the balance of convenience is in favour of granting it.

(3) It should not involve determination/decision of any point of dispute or a point incidental thereto for, it can be done only in an interim award. Therefore, an

interim order should not be in form of an award.

(4) Section 17 of the Act which requires publication of an award has no application to an order granting interim relief.

(5) Provisions of S. 33-C can be invoked for enforcement of an interim order.

17. (1) The next question for consideration is : Whether granting of an interim relief in the present case could be regarded as a matter incidental to the question referred for adjudication ? The point of dispute, 19(b), extracted earlier, shows that one of the disputes referred for adjudication was that the office-bearers should not be transferred. Therefore, it is clear, the Tribunal can in its final award grant that relief. Hence the question, whether or not during the pendency of the dispute, an order directing the management not to transfer the two office-bearers should be granted or not is certainly an interim relief as a point incidents to or a step in aid to the main relief sought for in the reference. If no such point of dispute was referred for adjudication, certainly the Tribunal would have had no power to grant such an interim order.

(2) The last question for consideration is : even on the basis that the Tribunal had got the power to grant an interim relief, was justified in passing the impugned order ? The circumstances under which the interim order has been made is set out in the order of the Tribunal. The relevant part of it reads :

"Taking into consideration that the presence of these two workmen is found absolutely necessary for proper adjudication of this case who are actively participating in giving instruction to the counsel, which I had occasion to notice throughout the proceedings. This fact is not denied but the II party and the memo dated 22nd December, 1984 makes it clear that these two workmen did attend this Tribunal on all the dates of hearing. Hence this application is allowed and this point is answered in the affirmative."

From the facts it is clear that not only the two persons were office-bearers but they were the two persons who were well versed with the case and were in charge of the case and were helping the conduct of the case. If such office-bearers who are well versed and are in charge of the case were to be transferred when the dispute is pending, certainly it would result in a great disadvantage or handicap to the workmen and might result in not conducting the case properly and might ultimately result in miscarriage of justice. The decision of the Supreme Court in *The Management of the Syndicate Bank Ltd. Vs. The Workmen*, on which the learned Counsel for the petitioner relied to show that in the matter of transfer, the same being a managerial function, the Labour Court must not interfere, does not support an absolute proposition that the Tribunal has no power to interfere with transfer. The decision undoubtedly indicates that in the matter of transfers, there should be least interference by the courts, for, a management has the right to utilise the services of an employee in a post or place of its choice and any undue interference by courts resulting in the undermining of this authority would make it impossible for the managements to

deploy its personnel in such places and in such manner as they consider expedient to ensure efficiency and discipline among the workmen. Therefore the Industrial Courts must be very circumspect in interfering with transfers. But, that does not mean that under no circumstances the transfer of a workmen can be interfered with by the Labour Courts. In the case of *Syndicate Bank (supra)*, one of the contentions of the workman was that through he was an office-bearer and according to the Sastry Award, an office-bearer could not be transferred, he been transferred in violation of the award. This point was rejected as, at the time of transfer, the workman was not an office-bearer. Relevant part of the judgment reads (at p. 441 and 442 of *The Management of the Syndicate Bank Ltd. Vs. The Workmen*,

"..... The second reason given by the Tribunal is that Veeranna was Joint Treasurer of the provincial unit of the All India Union and the transfer was made by the Bank as the Bank wanted to victimise Veeranna and to deprive the Union of his services as an office-bearer of the Union. But it is the admitted position that Veeranna was elected to the Office of Joint Treasure ship in June, 1963, i.e., about a month after his transfer order was issued and the Bank could not have known at the time of making the order of transfer that Veeranna would be elected as the Joint Treasurer of the Union. It is, therefore, not possible to attribute bad faith to the Bank in making the order of transfer of Veeranna .""

Therefore, the decision is not to the effect that even if the workman had been transferred after his election and the same was found to be contrary to the Sastry Award or was found to be a result of unfair labour practice or victimisation, the Tribunal had no power to interfere.

18. As far as the interim order made in this case is concerned, I am of the opinion that the request of the workmen that the two office-bearer should be retained at Bangalore till the case on both sides was closed and arguments were heard and orders were reserved, was reasonable and the Tribunal was fully justified in granting the interim relief.

19. Learned Counsel for the petitioner made another submission which, according to him, goes to the root of the matter and establishes lack of jurisdiction in the Tribunal. The submission was that the point of dispute regarding the transfer of office-bearer could not be regarded as an industrial dispute at all. In support of this submission, learned Counsel relied on the judgment of the Madras High Court in *Workmen of Indian Bank Vs. Management of Indian Bank*, The relevant portion of the judgment reads :

"..... Clearly, the activities of the union cannot be termed or treated as activities of the bank or as duties integrally or inseparably connected with banking operations. All the employees of the bank have been selected and appointed only to perform duties connected with the banking operations carried on by the bank. Their appointment to various categories of posts in the bank is for the performance of duties attached to the respective posts. The salaries are fixed

with reference to the qualifications of the employees and the nature of duties to be performed by them. On the other hand, trade union activities performed by the office-bearer of the union are solely for the benefit and welfare of the workmen of the bank and not connected with the banking institution itself or the members of the public, whose interests the banks are intended to serve. It will, therefore, be a fundamental mistake to allow confusion to prevail and deem them duties rendered by the office-bearer to the union as part of the duties rendered to the bank. Once this basic factor is recognised, the fallacy contained in the contention of the union can be clearly seen. The bank can function without the union; but the union cannot function without the bank. It therefore, follows that the prime duty of the employees is to serve the bank and then only the union. No doubt trade union activity has won universal recognition and it has a twin objective, viz., safeguarding the interests of the workers and ushering in industrial peace. Even so, its secondary role or character cannot get effaced. For whatever reason the management may have deemed it fit or conducive to grant duty relief at an anterior point of time, the legal status of that act is only that of a concession and not a matter pertaining to the conditions of service. The very fact that the benefit has not been conferred on all the office-bearers of the union but only on some and that too in different degrees, viz., some to have full duty relief and some to have partial duty relief, will go to show that the management had only extended a concession and had not granted recognition of any inherent in the office-bearers to claim duty relief."

Relying on the above judgment, learned Counsel maintained that any point of dispute which could be referred for adjudication must be a dispute arising between the management and workmen in their capacity as workmen and concerning conditions of service, and not in their capacity as office-bearers of a trade union and in respect of demand of certain privileges to them.

20. Learned counsel for the workmen, per contra submitted that non-transferability of the office-bearers of a trade union could be demanded as one of the conditions of services of the workmen. In support of the above submission, learned counsel relied on the Sastry Award regarding code of service conditions. The relevant portion of the award reads :

"1. Transfers are rendered necessary by the exigencies of administration. The proper view to take is that transfer are normal incidents of the working of a bank and they must be left to the discretion of those who guide the policy of the bank and manage its affairs.

(paragraph 535 of Sastry Award).

2. Wherever an activist of the trade union movement, as yet in its formative stage and liable to be crippled easily, is transferred, a suspicion naturally arises that it is inspired by ulterior motives and the consequence thereof may be an industrial dispute. In order that such suspicion may be avoided, as far as possible, the following procedure be followed.

(a) Every registered bank employees union, from time to time, shall furnish the bank with the names of the President. Vice-President and Secretaries of the Union;

(b) Except in very special cases, whenever the transfer of any of the above-mentioned office-bearers is contemplated, at least five clear days' notice should be put on the notice boards of the bank of such contemplated action;

(c) Any representation, written or oral, made by the union shall be considered by the bank;

(d) If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate; and

(e) The decision shall be communicated to the union as well as to the employees concerned.

(paragraph 535 of Sastry Award).

3. In general, the policy should be to limit the transfers to the minimum consistent with banking needs and efficiency. So far as members of the subordinate staff are concerned, there should be no transfers ordinarily and, if there are any transfers at all, they should not be beyond the language areas of the person so transferred. Even in the case of workmen not belonging to the subordinate staff, as far as possible, there should be no transfer outside the State or the language area in which an employee has been serving except, of course, with his consent. In all cases the number of transfers to which a workman is subject should be strictly limited and normally it should not be more than once in a year.

(Paragraph 536 of Sastry Award)

4. On transfer, a workmen cannot claim any special concessions attached to posts in any particular locality from which he is transferred, e.g., house rent allowance, hill allowance, fuel allowance, etc. Further, in no case shall a workmen's basic pay be reduced on transfer.

(Paragraph 537 of Sastry Award)

5. Any request by an employee for transfer on compassionate grounds will be considered sympathetically subject to exigencies and requirements of the bank, but such request will not be rejected only on the ground that he will have to be paid emoluments of a higher area.

(Paragraph 20.17, Bipartite Settlement with NOBW dated 9th November, 1966)."

Learned counsel pointed out that the question of non-transferability of office-bearers was one of the conditions of service of bank employees which clearly indicates that it could be demanded as one of the conditions of service. As pointed out earlier, in the case of Syndicate Bank (supra), the order of transfer of

an office-bearer was found to be not in contravention of the Sastry award as the order of transfer was made before the workman concerned had been elected as office-bearer. The decision of the Madras High Court in the case of Indian Bank case (supra), is clearly distinguishable as the withdrawal of certain benefits were found to have been extended by the management unilaterally only as a concession. I am unable to agree with the contention of the learned counsel for the petitioner that in respect of an industrial establishment having one or more branches any demand by the workman that office-bearers should not be transferred so long as they are office-bearers cannot be a subject matter for industrial adjudication. It could be a subject-matter of demand under the provisions of the I.D. Act, as it is intimately connected with the conditions of service. The incorporation of such a condition in the Sastry Award and the fact that it had been a term of settlement between management of banks and their employees also indicates that it could be a condition of service incorporated in a settlement or award.

Before concluding, it is necessary to state that on 4th September, 1985, on which date I reserved orders on the petition, I made an order to the effect that the two workers should report for duty within one week at the place to which they were transferred as the trial of the dispute had already been completed and the reference was reserved for making the award. The learned counsel for the workmen also did not oppose the passing of such an order as the purpose for which they wanted the interim order was only to conduct the case which was over.

In the result, I make the following order :

(i) Rule discarded. (ii) Petition dismissed. (iii) No costs.