

(2018) 06 BOM CK 0066
In the Bombay High Court
Case No : WRIT PETITION NO.4395 OF 2018

IDBI BANK LTD.

APPELLANT

Vs

BHARATITA KAMGAR SENA AND ORS

RESPONDENT

Date of Decision : 15-06-2018

Acts Referred:

Industrial Disputes Act,1947 — Section 33, 33A

Citation : (2018) 06 BOM CK 0066

Hon'ble Judges : S.C.GUPTA, J

Bench : Single Bench

Advocate : S.K.Talsania, Milind Joglekar, Rahul D.Oak, Vinay Menon

Judgement

1. Heard learned counsel for the parties.

1. Rule. Rule taken up for hearing forthwith by consent of learned counsel for the parties.

2. This petition challenges an order passed by the Central Government Industrial Tribunal at Mumbai on an application made under section 33 of the

Industrial Disputes Act,1947 (the 'Act'). It is the case of the petitioner that it had outsourced certain non-core activities such as house-keeping of

various branches and offices in Mumbai and Thane region to outside agencies. For such outsourcing, the petitioner had engaged two contractors, who

are respondent nos.2 and 3 to the petition. Through these contractors, about 268 workers were engaged for house-keeping work in the

offices/branches in Mumbai and Thane. It is the petitioner bank's case that these workers were allotted work, and they were supervised and paid

wages by the contractors. It is the contractors who had the right to terminate services of the workers and accordingly, for all intents and purposes,

these workers were employees of the contractors.

3. The services of three of these workers were terminated by the contractors sometime in 2005. An industrial dispute was raised in that behalf before the conciliation officer. A reference from out of those proceedings was sought for adjudication, but the Central government refused to make any reference. The matter was thereupon carried before this Court in a writ petition. That writ petition, being writ petition no.429 of 2006, was dismissed by a Division Bench of this Court on the ground inter alia that the workers concerned were engaged by independent contractors and no employer-employee relationship could be established between them and the petitioner-bank.

4. Sometime in March 2012, respondent no.1-Union raised a demand for regularization and permanency of these workers. This dispute, upon failure of conciliation, was referred by the Central Government to the Industrial Tribunal at Mumbai. An application was made by the 2nd party-workmen for interim relief in the reference. The prayers sought in that application included directions to the management of the petitioner to comply with the mandatory provisions of section 33 of the Act in respect of employment, wages, and conditions of service of all 268 workmen concerned in the present reference. It was also prayed that both the bank and the contractors be directed to maintain status quo with respect to the employment of these workmen and refrain from terminating their engagement. The Tribunal, by its order dated 28.6.2017, rejected this interim application holding inter alia that the second party union had not made out any prima facie case. The Tribunal inter alia observed that prima facie it appeared from the pleadings of the contractor (First Party no.3) that 189 workers amongst the concerned workmen engaged by it were employed for providing specialized services to the petitioner-bank at its various establishments; it had the requisite licence under the Contract Labour Act; the contractor had maintained attendance registers of 189 workers employed by it and paid salary, bonus etc to the workmen; the contractor used to supervise the workmen and sanction leave. In other words, by far the Tribunal considered these workmen to be employees of the contractor. The Tribunal further held that whether the work carried on by these workmen was perennial in nature and whether they were engaged to discharge the same duties as

other regular employees of the petitioner's bank and thus, were entitled to be treated on par with the regular workmen of the petitioner, would have to

be considered at the final hearing of the reference and no interim relief could be granted to the workmen.

This order was not challenged by the workmen or their union.

5. It appears that on another application made by these second party's workmen subsequently, i.e. 27.12.2017, praying for disbursement of monthly

salary, provident fund, ESI contributions etc. by the petitioner's bank and directions to it to maintain status quo and not to terminate the contract with

the two contractors named therein, the impugned order came to be passed. The impugned order surprisingly holds that though interim relief concerning

the petitioner's right to terminate its contract with the contractors could not be granted to the workmen, yet, at the same time, the petitioner could not

be permitted to alter the service conditions of the concerned workmen and thus, even if the contractors were changed, the service conditions of the

concerned workmen should remain unchanged and they should be paid monthly salary, provident fund, ESI contributions, etc. as before. The Tribunal,

accordingly, granted interim relief to the workmen to the extent that there should not be any change in their service conditions even if there was any

change of contractors.

6. In the face of the issue concerning existence of employer-employee relationship between the petitioner and the workmen engaged through the two

contractors being decided earlier against the workmen and the rejection of the Central Government to make a reference on the ground of want of

such relationship being affirmed by this Court in writ petition No.429 of 2006 and the Industrial Tribunal having earlier held that there was no prima

facie case for interim relief of status quo with respect to their employment, the Industrial Court could not have granted the same relief under section

33 of the Act. It is pertinent to note that whilst granting this interim relief, the Industrial Court has not even considered whether there was any prima

facie case made out by the workmen or their union that they were direct employees of the petitioner's bank. In other words, without considering

whether the workmen could even be prima facie considered to be employees of the petitioner's bank and having already come to the conclusion in an

interim application earlier that there was no prima facie case in this behalf, the

Industrial Tribunal could not have given relief of status quo in respect of their conditions of services. When their very service could not be protected by any interim order earlier on the ground that they were not shown to

be employees of the petitioner's bank, there is no question of directing the petitioner's bank to protect the conditions of their service.

7. Learned counsel for the respondent relies on the provisions of section 33 of the Act and contends that during the pendency of the proceedings

before the Tribunal, the employer could not change or alter the conditions of service applicable to the workmen concerned immediately before the

commencement of the proceedings. Before any industrial adjudicator makes an order under section 33 for maintenance of service conditions, it must

be found that at least prima facie the person alleged to be an employer and against whom an order under section 33 is sought, is really the employer of

the applicant's workmen. The Industrial Court has not only failed to arrive at any such prima facie conclusion but in fact has, in an interim application

made earlier by the same workmen, come to a diametrically opposite conclusion, holding them prima facie to be employees of the contractors and

refusing to pass any order for protection of their service with the petitioner's bank. The respondent's union had in fact, in the second interim application,

in which the impugned order came to be passed, not even asked for any relief of maintenance of service conditions by the petitioner's bank. The

application was for directions to the petitioner's bank not to terminate the contract with the two contractors. This relief, as rightly held by the Tribunal,

was not a matter connected with the dispute and thus, could not have been granted by the Industrial Court. After having found so, the Industrial

Tribunal strangely proceeded to grant an entirely different relief forbidding change of service conditions of the concerned workmen by the petitioner's

bank even after change of contractors till final disposal of the reference. That is, to say the least, preposterous.

8. Learned counsel for the respondent's union relies on the cases of Oil and Natural Gas Commission Ltd vs Transport and Dock Workers Union 2007

(2) LLJ 1085 and Reliance Energy Limited vs Rashtrawadi Kamgar Sangh (2009) ITLLJ 708 Bom decided by our Court, and the case of Gujarat Energy

Transmission Corporation Ltd vs Labour Court Anand 2014 (14) SCT 748 decided by the Gujarat High Court in support of his submissions that such

status quo order could have been passed in an appropriate case against the petitioner. In Oil and Natural Gas Commission Ltd (supra), our

Court considered admissibility of interim relief as a matter incidental to the main question referred to the tribunal without being itself referred in

express terms. There is no quarrel with this proposition. The fact of the matter, however, is that the proposition has no relevance in the facts of the

present case. The impugned order of the Industrial Court is questioned in the present case not because it grants interim relief in a matter incidental to

the main question but because it does not find any case for interim relief and yet grants it. In the case of Gujarat Energy Transmission Corporation Ltd

(supra), the Court found that the workers concerned were in the employment of the petitioner company for 15 to 18 years; over all these years, only

contractors were changed but the association of the workmen with the petitioner company continued to subsist; and that thus, prima facie, there was

substantial force in the argument of the learned advocate for the respondent workmen that the contract was merely a paper arrangement and in the

premises, it was inclined to grant protection under Section 33 A of the Act. In other words, the Court in that case found a strong prima facie case that

the workmen before it were direct employees of the establishment and the contract through which they were employed was a paper arrangement.

There is no such finding, as noted above, in the present case. If anything, the finding is against the respondent union. Even in the case of Reliance

Energy Limited (supra), the facts were wholly different and the conclusion that the status quo order could be passed against both the principal

employer and the contractor has no bearing on the facts of our case.

9. In the premises, the impugned order of the Industrial Tribunal suffers from a jurisdictional error and cannot be sustained. Accordingly, Rule is made

absolute by quashing and setting aside the impugned order. The Industrial Court shall now decide the reference as expeditiously as possible, and in any

event, preferably within one year from today. Both parties shall cooperate in the matter of expeditious trial of the reference.