

(1986) 09 DEL CK 0013

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 1429 of 1986 and Civil Writ Appeal No. 1923 of 1983

India Tourism Development Corporation

APPELLANT

Vs

R.S. Khanna and Others

RESPONDENT

Date of Decision : 22-09-1986

Acts Referred:

Citation : (1986) 30 DLT 475

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : S.N. Bhandari, Geeta Sharma and M.D. Tekhi, for the Appellant;

Judgement

Mahinder Narain, J.

(1) Mr. S.N.Bhandari on behalf of the petitioner India Tourism Development Corporation Ltd , states that Akbar Hotel was closed w.e.f. 1-4-1986. He further asserts that this closure was a bona fide and a genuine one. He refers to the provisions of section 2(c)(c) of the Industrial Disputes Act, which reads as under :

"2(C)(C)-"CLOSURE"means the permanent closing down of a place of employment or part thereof."

(2) It is contended by Mr. Bhandari that this provision as amended w.e.f. 21-8-1984, permits permanent closing down of a part of place of employment. He further asserts that the Akbar Hotel was a place of employment which was an independent unit, inasmuch as it did not have any functional or financial integrality with other hotels being run by the petitioner.

(3) He says that the closure being a genuine closure, reinstatement cannot be ordered in view of a judgment of the Supreme Court in Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur, , wherein the Supreme Court has observed as under :

"IF the same business had been continued, though under a different guise, the claim of the workmen not to be retrenched could possibly be considered by the Tribunal ; but, on the finding that there was a genuine closure of the business that used to be carried on at the depots, no question could arise of the retrenchment being set aside by the Tribunal. The Tribunal could not ask the Company to reemploy or reinstate the workmen, because there was no business for which the workmen could be required. In these circumstances all that the workmen could claim was compensation for loss of their service and in that respect, as we have indicated above, the workmen have received adequate compensation."

(4) The workman before me relies upon the order of the Supreme Court dated 17th September, 1984, in SLP No. 7526 of 1984, wherein the Supreme Court stated that during the pendency of the writ petition in the High Court the petitioner/employee will be paid 100% wages month by month, instead of 25% as directed by the order under appeal. The petitioner further states that the matter of closure of Akbar Hotel is pending adjudication before the Supreme Court. He further asserts that the Attorney General has made a statement in those proceedings that the workers of the Akbar Hotel are being absorbed in other hotels being run by the India Tourism Development Corporation. What Mr. Bhandari says is that some workers may be given re-employment in the other units of the India Tourism Development Corporation subject to availability of vacancies, and that this re-employment will be as fresh employment. Even the statement of the Attorney General which is stated to have been made by the workman, does not bear out the contention of the workman that the Akbar Hotel has not been closed. The reemployment of the workers of the Akbar Hotel would be made only if the business of the Akbar Hotel had been closed down. In order to finally determine the controversy between the parties, it is permissible to take subsequent events into account. In this application all that is required to determine is what amount should be paid to the workman.

(5) Mr. Bhandari has already undertaken to deposit in this Court the amount of retrenchment compensation which will be payable to the workman till 1-4-1986 without prejudice to the rights of contentions which have been raised in this writ petition.

(6) In my view because of subsequent events, it would not be possible to make an effective direction for re-employment of the workman beyond 1-4-1986. If there is no employment which can be given to the workman, no wages can be receivable by the workman.

(7) In any case, as this is an interlocutory matter, interest of justice will be served if the amount of retrenchment compensation which is receivable by the workman is deposited in this Court, assuming that he has continued to be in employment till 1st April, 1985. The workman does not dispute that he has received the wages till 1st April, 1986. The question which will require determination is whether there is a genuine closure of the Akbar Hotel. The

workman has shown to me a copy of the letter dated 18th March, 1986, which has been written by the Joint Director. Ministry of Labour to the India Tourism Development Corporation to the effect that the Central Government is not required to take any action on the application received from the India Tourism Development Corporation, seeking permission u/s 25(0) of the Industrial Disputes Act for closure of the Akbar Hotel. In this view of the matter there may be a dispute whether the closure is a genuine closure, and within the meaning of 1970(2) Indian Factories and Labour Reports 629.

(8) As Mr. Bhandari is willing to deposit the wages due to the work- man in terms of the order of the Supreme Court, combing needs to be decided at this stage. Mr. Bhandari says that he will make deposit in Court. He says that he will also deposit the retrenchment compensation which may be receivable by the workman, within 15 days from today. Let him do so within 15 days.

(9) Orders regarding withdrawal of this amount shall be passed on parties moving in this matter. Liberty is given to the parties for moving an application for early hearing of the writ petition.

(10) C.M. No. 1429 of 1986 accordingly stands disposed of.