
(2008) 07 MAD CK 0139

In the Madras High Court

Case No : W.A. No. 579 of 2008 and M.P. No. 1 of 2008

ITC Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2008) 119 FLR 284 : (2009) 1 LLJ 90

Hon'ble Judges : A.K. Ganguly, C.J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : A.L. Somayaji and S. Jayaraman, for the Appellant; C.K. Chandrasekar, for Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, C.J.—Heard learned Counsel for the parties.

2. This Appeal is filed at the instance of ITC Ltd., Chennai impugning the order dated August 14, 2007 passed by the learned Judge of the Writ Court, whereby the learned Judge dismissed the Writ Petition filed by the appellant.

3. Subject matter of challenge in the Writ Petition was an order of the 1st respondent -Industrial Tribunal dated June 14, 2006 passed in Approval Petition Nos. 27 to 48/2001, which was filed u/s 33(1)(c) of the Industrial Disputes Act (herein after referred to as the "said Act").

4. The material facts of the case, as alleged by the appellant, are that there was large scale violence on November 13, 2001 at the instance of workmen, and thereupon charge sheets were issued to all the workmen on November 17, 2001, but the workmen refused to accept the charge sheet. Then, an enquiry was sought to be held. Notices were sent to the workmen. But the case of the appellant is that the workmen refused to accept the notices. The Enquiry Officer submitted his report holding the workmen guilty of the charges. The workmen refused to accept the second show cause notices also. Thereafter, on December

22, 2001 the appellant dismissed all the workmen. On the same day the appellant filed Approval Petitions before the Tribunal. After protracted hearing, the Tribunal by its order dated June 14, 2006 dismissed the Approval Petitions filed by the appellant holding that the workmen were not given proper opportunity to participate in the enquiry, and the enquiry was conducted in a manner which is neither fair nor proper, and thus, the domestic enquiry was quashed, and the appellant was permitted to conduct further enquiry by letting fresh evidence. It appears that the said liberty was given to the appellant pursuant to a prayer made by the appellant in their Application u/s 33(1)(c) of the Act, which is hereunder:

In the event of a challenge to the enquiry proceedings and/or allegation of perversity of the Enquiry Officer's findings, the applicant craves leave to let in evidence to establish the charges against the petitioner before this Hon"ble Court as to enable this Hon"ble Court to come to a conclusion on its own in the light of the ruling of the Division Bench of our High Court in 1986 LIC 725 and also in the light of the decision of the Supreme Court in Cooper Engineering Ltd. v. P.P. Mundhe case.

5. We have heard learned Counsel for the parties. We find that some features of the so called domestic enquiry are inconsistent with the principles of natural justice, and on the basis of which it is difficult for this Court to come to a conclusion different from the one which was taken by the Tribunal.

6. Admittedly, 22 enquiries were held in one day and in such enquiries 184 witnesses were examined. There was only one management representative to conduct all the 22 enquiries. It is not disputed that in most of the cases only the evidence of the management witnesses were marked and enquiry was concluded. It is also not disputed that in many of the enquiries the management witness acted as Enquiry Officer in another enquiry. Therefore, the same person acted both as management witness and Enquiry Officer. Learned Counsel for the appellant submitted that this is not the case in all the enquiries, but in some of the enquiries this feature of management witness adorning the role of the Enquiry Officer is present.

7. In view of the aforesaid admitted position, we find it difficult to hold that the finding of the Tribunal that the enquiry was not properly held and there was no fair enquiry is an improper finding on facts.

8. Apart from that the Hon"ble Apex Court right from the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, and D.P. Maheswari v. Delhi Administration 1983 11 LLJ 425 frowned upon interference by the Courts on a preliminary point when the point on which the interference is sought for can be challenged after the final award is passed. Such interference was never encouraged by the Supreme Court in the interest of expediting quick disposal of cases by the Industrial Tribunal.

That being the position, we do not wish to interfere with the order passed by the

learned Judge of the Writ Court since the High Court opined that the Company may adduce evidence before the Tribunal to prove its case.

9. The appeal is, therefore, dismissed. However, liberty is granted to the appellant to take the opportunity of adducing evidence before the Tribunal and in that event, the Tribunal shall dispose of the matter as early as possible preferably within a period of four months from the date this order is served on the Tribunal by any one of the parties. If any record has come from the Tribunal, the Registry is directed to send them back immediately. No costs. Consequently, connected Miscellaneous Petition is also dismissed.