
(2003) 08 BOM CK 0030

In the Bombay High Court

Case No : L.P.A. No. 5 of 2003 in Writ Petition No. 106 of 1999

MRF Ltd.

APPELLANT

Vs

Goa MRF Employees" Union and Another

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(4), 11(3), 33, 33A

Citation : (2004) 1 LLJ 394

Hon'ble Judges : P.V. Hardas, J;F.I. Rebello, J

Bench : Division Bench

Advocate : G.K. Sardessai and S.G. Bhobe, for the Appellant; Arshad Shaikh and V. Menezes, for the Respondent

Final Decision : Allowed

Judgement

F.I. Rebello, J.—The appellant employer has preferred this appeal against the Judgment of the learned single Judge of this Court dated May

2, 2003. The question formulated by the learned Judge for consideration was as under:

Does the Industrial Tribunal have the power to grant the reliefs including in the nature of injunction in a complaint filed before it u/s 33-A of the

Industrial Disputes Act, 1947?

The learned Judge has answered the same in the affirmative.

2. A few facts may be set out. There were disputes between the parties which were taken up in conciliation including Charter of Demands. The

respondent No. 1 is a registered Union whose members are the workmen employed with the appellant herein. Settlement arrived at between the

employer and the workmen was due to expire on September 30, 1995. The respondent No. 1 herein had served the notice of termination of

settlement on July 29, 1995. On February 15, 1996, respondent No. 1 served a Charter of Demands. The appellant, in its turn also served a

Charter of Demands dated February 7, 1996. As the negotiations between the parties did not culminate into a settlement, the Labour

Commissioner being called upon to intervene, commenced conciliation proceedings. As the matter could not be settled, a failure report came to be

submitted on October 28, 1996. As no reference was made for a considerable period of time, the Union filed Writ Petition bearing No. 135/1997,

seeking a writ of mandamus against the respondents therein to refer the dispute u/s 10(1) to the Industrial Tribunal for adjudication. The petition

was disposed of by an order dated June 9, 1997, wherein the statement on behalf of the appropriate Government was recorded that the dispute

had been referred to the Industrial Tribunal by order dated June 5, 1997.

3. It is the case of the Union that the employer to pressurise the workmen, started illegally changing service conditions to their prejudice. Hence the

Union by letter dated August 20, 1997 called upon the appellant to refrain from going ahead with the same. As the employer refused to refrain

from altering change, a complaint cannot be filed by the Union u/s 33-A of the Industrial Disputes Act. The reliefs prayed therein were for a

declaration that appellant had illegally changed the service conditions of the workmen and for directions calling upon the respondent No. 1 to cease

and desist from changing the service conditions of the workmen and not to implement the seven day running system in the departments hitherto run

on a six day Sunday off system. An interim relief was sought to restrain the employer, pending the hearing and final disposal of the complaint from

running the departments hitherto run on a six-days Sunday of system to the Seven-day running system and to further restrain the respondents from

making any changes in the service conditions. The Industrial Tribunal after hearing the parties dismissed the respondent No. 1's application for

interim reliefs by order dated September 3, 1998 relying on the Judgment of the Kerala High Court in the case of Dhanalakshmi Bank Ltd. v.

Parameswara Menon, 1980 11 LLJ 45. The Tribunal held that it had no powers to grant interim reliefs sought, as they were in the nature of

injunction and that the provisions of the Act do not confer powers on the Tribunal to grant such orders. It is against this order that the writ petition

was filed, from which the present L.P.A. Placing reliance on the Judgment of Kamarhatty Co. Ltd. Vs. Shri Ushnath Pakrashi, , the learned single

Judge held that while considering the application u/s 33-A, the Tribunal has all powers to deal with the complaint as it would have, whilst dealing

with the reference u/s 10. This aspect of the matter has not been argued before this Court. The learned Judge, thereafter, proceeded to consider

the question whether u/s 10, the Tribunal has power to grant interim relief including in the nature of an injunction. The learned Judge relied in the

case of The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union, , the judgment in the case of M/s. Lokmat

Newspapers Pvt. Ltd. Vs. Shankarprasad, and the judgment in the case of Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and

Another, and also on a Judgment of Division Bench of this Court in the case of Bharat Petroleum Corporation Limited Vs. Petroleum Employees"

Union and Another, . The learned Judge held that he was unable to agree with the view taken by the Kerala High Court in Dhanalakshmi Bank

Ltd. v. Parameswara Menon (supra). Certain other Judgments relied on behalf of the employer were considered by the learned Judge who held

that they would not apply while considering the powers u/s 10 of the Industrial Disputes Act. The learned Judge, thereafter, was pleased to hold

that the Industrial Tribunal would have jurisdiction to grant the interim reliefs. The Industrial Disputes Act, 1947, hereinafter shall be referred to as

the I.D. Act. I

4. At the hearing of the appeal, on behalf of the appellants, placing reliance on the definition of "Award" as set out in Section 2(b), it is contended

that the award means an interim or final adjudication of the merits of the matter. Our attention is invited to the provisions of Section 9-A of the I.D.

Act, 1947 as also the powers of the Conciliation Officers, Boards, Courts and Tribunal u/s 11. Section 33 provides for conditions of service, etc.

Section 33-A is a provision conferring power on the Tribunal to entertain a complaint when the conditions of service have been changed or non-

compliance of the provisions of Section 33 during the pendency of proceedings before a Conciliation Officer, Board, an arbitrator, Labour Court,

Tribunal or National Tribunal. It is the contention of the appellants that in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and

Others, what was in issue was the power to set aside an ex pane award. The Apex Court therein relying on the language of the rules held that the

Tribunal would have powers to set aside the ex pane award before the award was published. It was further held that under Rule 24(d), the

Tribunal could exercise the power of the Civil Court under Order 17 of the Code of Civil Procedure. Reliance is also placed on the Judgment of

Dhaitalakshmi Bank Ltd. v. Parameswara Menon (supra) to contend that there is no power to grant interim relief in the nature of an injunction as it

is not within the competence of the Tribunal since no power is conferred on it, by any of the provisions of the Act. He then submitted that the

Industrial Tribunal is a creature of statute and will exercise only those powers which are conferred on it. At the highest, the power can be in aid of

the substantive relief. Power of injunction, it is contended is an independent power and the Industrial Tribunal has not been conferred with such

powers. It is then submitted that the Industrial Tribunal is also not a Court and merely because it has a few trappings of the Court, it does not imply

that substantive powers of injunction are conferred on the Tribunal. Reliance is again placed on Grindlays Bank Ltd. v. Central Government

Industrial Tribunal (supra) to contend that the power is only to set aside ex pane award, but subject to availability of condition laid down under

Rule 22 of the Central Rules and Order 9, Rule 13 of the Code of Civil Procedure. It is further submitted that being a creature of statute it can only

adjudicate on the reference made by the appropriate Government. It is bound by the terms and the scope of the reference and is not authorised to

go beyond the reference as it is a Tribunal of limited jurisdiction and the jurisdiction is further narrowed by terms of the reference. The Award of

the Tribunal has force and effect only on publication as provided u/s 17. Orders in the nature of injunction are not capable of enforcement or being

executed under the provisions of the I.D. Act. In these circumstances, it is submitted that the substantive powers of injunction cannot be invoked

by the Tribunal either in the nature of "" equity or with the object of doing any apparent justice. Reliance is placed on The Premier Automobiles Ltd.

Vs. Kamlekar Shantaram Wadke of Bombay and Others, . That judgment pertains to ouster of jurisdiction of the Civil Court when special rights

are created under an Act, a remedy is provided and also provisions for enforcement of th'e Award. Reliance is then placed on the judgment in the

case of Morgan Stanley Mutual Fund Vs. Kartick Das, . That was a matter under the Consumer Protection Act where the Apex Court after

considering the provisions held that there was no power to grant any interim relief or ad interim and what could be granted was only final relief.

Some other judgments were also referred to in the matter of conferring powers of review. Those judgments would really be of no assistance to the

issues involved here. The Judgment in the case of Dr. Wilfred A. De Souza and others Vs. Shri Tomazinho Cardozo Hon"ble Speaker of The

Legislative Assembly and others, , is sought to be distinguished on various grounds. It is, therefore, submitted that the Industrial Tribunal whether

acting on reference under] Section 10 or on a complaint u/s 33-A, would have no jurisdiction to grant relief by way of injunction as is sought for.

5. On the other hand, on behalf of the Union Respondent No. 1, their learned Counsel submitted that while examining the complaint u/s 33-A, the

Tribunal would exercise all powers which it Would have, while dealing with the reference u/s 10, relying on the Judgment of Kamarhatty Company

Ltd. v. Ushinath Pakrashi (supra). It is therefore, submitted that it must follow that the Tribunal has powers to make such orders as to the reliefs as

may be appropriate in the case as it can make if a reference of a dispute is made to it. It is then contended that the power of the Industrial Tribunal

to grant interim relief is no longer res integra. For that purpose, reliance is placed in the Judgment of the Management of Hotel Imperial, (supra),

and of the Division Bench of this Court in the case of Bharat Petroleum Ltd. (supra) to contend that the Division Bench of this Court was clearly of

the view that u/s 7-A of the Act, an Industrial Tribunal on being constituted will exercise jurisdiction, as to entertain any industrial dispute relating to

any matter, specified in the Second Schedule or Third Schedule and to perform such other functions as may be assigned under the Act. Reliance is

then placed on Section 10(4) to contend that powers have been conferred on the Industrial Tribunal to adjudicate on a matter incidental to the

reference under consideration. It is submitted that it is a well-known rule of statutory construction that a Tribunal or body should be considered to

be endowed with such ancillary or incidental powers so as to do justice between the parties. No construction can be placed on a Section which

would in fact altogether defeat the intention of the legislature. Section 33-A of the Act was intended to confer an additional and distinct benefit by

permitting the workmen to make a complaint without having to resort to the procedure of seeking a reference. To hold that u/s 33-A of the Act,

the Tribunal would have no jurisdiction, is to deprive the workmen of an effective remedy and drive them to adopt the time consuming procedure

u/s 10 of the Act in order to avail of the interim relief, that the Legislature sought to avoid, by introduction of Section 33-A. Reference is then made

to some other judgments for the purposes of showing how the language of the statute must be construed. They will be referred to the extent they

are required. Relying on *Income Tax Officer, Cannanore v. Mohd. Kunhi*, AIR 1969 SC 430, it is contended that the Apex Court has held that it

is duty of the Judges to apply the laws not only to what appears to be regulated by their express disposition, but to all cases where a just

application of them may be made. Reliance is placed in the Judgment in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram*

Gopal Sharma, 2002 I LU 834 . Reliance is also placed on the Judgment in the case of *Dr. Wilfred A. D'Souza and Ors. v. Thomazinho Cardozo*

and Ors. (supra) to point out that a Division Bench of this Court has taken a view that the Speaker of a Legislative Assembly has the power to

grant interim relief within the scope and ambit of the relief, which may be granted on final determination of the dispute in relation to disqualification.

6. On the facts of this case, it is pointed out that the Company has altered the conditions of service and is doing so almost on daily basis. The

workmen, who legitimately refuse to carry out such altered conditions of service, unilaterally and arbitrarily imposed upon them are thereafter

dismissed from the service. Further if the dismissals were converted into reference, that would take over five years for adjudication. It is, therefore,

submitted that the view taken by the learned single Judge is a correct view and ought not to be interfered with by this Court in appeal.

7. We have given our anxious consideration, as the issue is of considerable importance in the field of industrial adjudication. What will be the

powers of the Tribunal on a reference being made u/s 10 or when a complaint is filed u/s 33-A for non-compliance of Section 7-A of the Act ? Is

it within the jurisdiction of the Tribunal to exercise jurisdiction to prevent breach of settlement, standing orders or the conditions of service by

resorting to the power u/s 10(4) namely the expression ""matters incidental thereto""? Does the Tribunal have jurisdiction to injunct an employer from

breaching a standing order or 1 settlement or other conditions of service and if it does how will it enforce the decision ?

8. It will firstly be necessary to advert to the Judgments cited at the Bar for the purpose of finding out, whether the contention that Industrial

Tribunal can grant injunction is no longer *res Integra* or has been concluded by the Apex Court or by this Court as has been contended on behalf

of the Union, We will first consider the issue which was in issue in the case of *Management of Hotel Imperial, New Delhi and Ors.* (supra). One of

the questions raised there was, whether the order granting interim relief is an Award within the meaning of Section 2(b) and must, therefore, be

published u/s 17. While considering what is the expression ""incidental"" as appearing in Section 10(4), the Apex Court observed as under 1959II

LLJ 544 551:

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 u/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.

9. The Apex Court then proceeded to answer the next question as to how the Tribunal should proceed in the matter, if it decides to grant interim

relief. The Apex Court then observed that the definition of the expression ""award"" is both interim or final determination either of the whole of the

dispute referred to the Tribunal or of any question relating thereto. The Apex Court further observed that it was open to the Tribunal to give an

award about the entire dispute at the end of all proceedings and this would be the final determination of the industrial dispute referred to it. It was

also open to the Tribunal to make an award about some of the matters referred to it whilst some others still remained to be decided. This would be

an interim determination of any question relating thereto. It observed that in either case it will have to be published as required by Section 17. The

Apex Court thus observed that such awards are, however, not in nature of interim relief for they decide the industrial dispute or some question

relating thereto. Interim reliefs, on the other hand, is granted under the powers

conferred on the Tribunal u/s 10(4) with respect to matters incidental to the points of dispute for adjudication. All that, therefore, the Apex Court has said is that considering Section 10(4), it will be open to the Tribunal to grant the interim relief in relation to matters incidental to the points of dispute for adjudication. In other words it must arise from the subject matter of the reference and not outside it. The issue of enforcement of such orders made under the Act was left unanswered. The Judgment does not conclude the issue whether it is open to the Industrial Tribunal to grant preventive relief by way of an injunction in respect of a matter which is not the subject matter of the reference or even in respect of the subject matter of the reference. That the Apex Court so understood the Judgment, can be seen from the observation in the case of Delhi Cloth and General Mills Co. "supra), where whilst referring to the Judgment in the case of Hotel Imperial (supra) the Apex 5 Court noted as under 1960 LLJ 712:

....Apart from the question whether the Tribunal had jurisdiction to pass an interim order like this without making an interim award, (a point which was considered and left open by this Court in The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, we are of opinion that where the Tribunal is dealing with an application u/s 33-A of the Act and the question before it is whether an order of dismissal is against the provisions of Section 33 it would be wrong in law for the Tribunal to grant reinstatement or full wages in case the employer did not take the workmen back in its service as an interim measure.....

10. It is, therefore, clear that the issue involved herein was not in issue and has not been answered in the above judgment. In that case, an interim relief was granted directing the workman to be permitted to work, in the complaint filed u/s 33-A. The Apex Court held that it was wrong in law for the Tribunal to pass such an order and further to direct full wages in case the employer did not take the workman in service. Lokmat Newspapers Pvt. Ltd. (supra) was a case where a complaint was filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, referred to as "MRTU & PULP Act")- That can be noted from the Judgment. The questions for consideration were set out. There was no issue in issue like what is in issue in the present case. It is no doubt true that in the

Judgment, there is some discussion while discussing the issue u/s 59 of the MRTU & PULP Act and. Section 10 of the Act. The Court observed

that when reference is made to the competent Court under the I.D. Act. In appropriate cases, the Court to which such references are made has

ample jurisdiction to pass interim orders and if the Court found that the impugned retrenchment order was required to be stayed even though it had

been passed after conciliation proceedings were over and where there was no prohibitory order from any authority, such retrenchment order could

have been stayed. Reliance then was placed in the Judgment in the case of The Hind Cycles Ltd., and Another Vs. The Workmen, . Again the

Judgment does not really answer the issue in issue in this appeal. In Bharat Petroleum Corporation Ltd. v. Petroleum Employees' Union, Mumbai

(supra), the issue before the learned Division Bench was whether a suit was maintainable at the instance of an employer, to injunct the Union from

going on a strike even if the strike was illegal. The Division Bench answering the issue held that the Civil Court had no jurisdiction. While so

deciding, there is some reference to an argument raised as to incidental powers by Tribunal u/s 10. An argument was advanced before the learned

Division Bench as to why the Civil Court had no jurisdiction by pointing out that there is no power in the Industrial Tribunal to grant interim relief.

That argument was rejected by holding firstly that expression "award" includes an interim determination of any industrial dispute or any question

relating thereto by the Tribunal. Further the power of an Industrial Tribunal u/s 10(4) to adjudicate on matters ""incidental"" to the points of dispute

referred to adjudication, would conceivably includes its power to grant interim relief. The Division Bench held, that the Tribunal had jurisdiction to

grant interim relief when a reference was made to it is no longer in doubt, in view of the decision in Hotel Imperial v. Hotel Workers Union,

(supra). Therefore, I from the Judgment of the Division Bench, all that can be spelt out is, that considering the language of Section 10(4), it will be

open to the Industrial Tribunal to grant interim relief. These in our opinion, are mere observations to repel an argument sought to be advanced. The

issue was not directly in issue. Apart from the mere observations, the learned Division Bench has not answered the proposition of law, that an

interim relief by way of preventive injunction can be granted and if granted how it will be enforced. Apart from that the order of the Division Bench

was passed in respect of an ad interim relief and not in a final adjudication of the matter for it to be said to be a binding judgment of a Co-ordinate

Bench of this Court.

11. We may now gainfully refer to Section 10(4), which reads as under;

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.

12. It is based on this sub-section, that it is sought to be contended, that there is power to grant interim relief. u/s 38 power has been conferred to

make rules, including summoning of witnesses, the production of documents, and what is set out in Section, 38(2)(a). Section 11 of the I.D. Act

confers certain powers vested in the Civil Court under the CPC on the Tribunal. It may be necessary to reproduce the said sub-sections, as it has

an important bearing on answering the issue, being discussed. Section 11(3) reads as under:

(3). Every Board, Court, (Labour Court, Tribunal and National Tribunal) shall have the same powers as are vested in a Civil 2 Court under the

Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed, and every inquiry or investigation by a Board, Court, (Labour Court, Tribunal or

National Tribunal) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of

1860).

Section 11(5), reads as under:

A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter

under consideration as an assessor or assessors to advise it in the proceeding

before it.

13. Under Rule 24, it is set out that in addition to the powers conferred by the Act, a Board, Labour Court, Tribunal or National Tribunal shall

have the same powers as are vested in the Civil Court under the CPC 1908 when trying a suit, in respect of the following matters, namely: (a)

discovery and inspection; (b) granting adjournment; and (c) reception of evidence taken on affidavit and the Board, Court, Labour Court, Tribunal

or National Tribunal may summon and examine any person whose evidence appears to it, to be material and shall be deemed to be a Civil Court

within the meaning of Section 480 and 482 of the Code of Civil Procedure. Section 38 of the Specific Relief Act is the Section dealing with the

power to grant a perpetual injunction. u/s 37, of the same Act it is set out that temporary injunctions are such as are to continue until specified time

or until further orders of the Court and are regulated by the Code of Civil Procedure. Section 94(c) of the C.P.C. is one such provision conferring

power to grant temporary injunction. The grant of temporary injunction is regulated by Order 39, Rule 1 and Rule 2. In so far as Rule 1 is

concerned, it provides for grant of temporary injunction (a) where any property in dispute in a suit is in danger of being wasted, damaged or

alienated by an party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends to remove or dispose of

his property with a view to defrauding his creditors; (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the

plaintiff in relation to any property in dispute in the suit. Under Order 39, Rule 2, a temporary injunction can be granted to restrain the defendant

from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not. It is, therefore, clear on a

cogent reading of Section 37 of the Specific Relief Act and 5 Section 94(c) read with Order 39 of the C.P. C. that reliefs by way of temporary

injunction are either to protect the property during the pendency of the proceeding or to prevent a party committing breach of a contract which can

be specifically enforced. If it cannot be specifically enforced there can be no injunction.

14. The issue then would be whether the Industrial Tribunal can grant an injunction to restrain the employer from committing breach of terms of a

settlement, standing orders or other conditions of service applicable to the workmen, in a reference u/s 10 or on a complaint u/s 33-A.

15. A look at some of the provisions of I.D. Act, 1947 will be necessary for the purpose of understanding the nature of the dispute that can be

adjudicated. A reference can only be made u/s 10 if the: appropriate Government is of the opinion that any industrial dispute exists or is

apprehended. An "industrial dispute" has been defined u/s 2(k) to mean any dispute or difference between, employers and employers or between

employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of

employment or with the conditions of labour, or any person. Apart from that certain individual disputes are also deemed to be industrial disputes,

like when an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman. Therefore, what an

Industrial Tribunal can adjudicate are the industrial disputes either in existence or apprehended. Under Sub-section (3) of Section 10 where an

industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal, there is power in the appropriate Government to pass

an order preventing continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

Under Sub-section (4) of Section 10, the Industrial Tribunal is confined to adjudicate only those points and matters incidental thereto which are

referred to it. What is further important to note from considering the powers conferred under Sub-section (3) is that even if a dispute pertaining to

a strike or lock-out or apprehended strike or lock-out is referred to an Industrial Tribunal, the power to prohibit continuance is not that of the

Industrial Tribunal, but of the appropriate Government. The Tribunal on a reference can only decide about the legality or otherwise of the strike or

lockout. Gainful reference for that may be made to the provisions of Sections 22, 23, and 24 of the I.D. Act. What can be immediately noticed

from these provisions of law is that, it provides for prohibition of strikes and lock outs if in existence. There is power conferred to ban the same.

However, there is no power to ban in the event there is only a threatened strike or lock-out whether legal or illegal though there is a prohibition in

terms of Section 21 and Section 22 of the Act. It is no doubt true that in Bharat Petroleum Corporation Limited (supra), it was argued that the

Industrial Tribunal has no power to grant an interim relief and the learned Division Bench had noted that the power to adjudicate includes incidental matters and would thus include its power to grant interim relief. What the Division Bench, however, noted in the earlier part of the said observation is that the relief in the form of permanent injunction could still be granted on a properly worded reference. These are mere observations. Normally a strike or lock-out is in furtherance of a demand either by the employer in the case of lock-out or by the workmen in case of strike. Apart from the powers conferred u/s 10(3), u/s 26, any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the Act, is liable for punishment. Similarly, Section 27 deals with instigation and u/s 28, any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment. We are therefore, unable to visualise a situation where a reference to injunct workmen from going on a strike when the appropriate Government under the statute has the power to prevent the continuance of the strike and the further provisions of going on strike in certain situations. A strike is resorted to as a means to espouse demand, which dispute can be referred to adjudication. Section 7-A sets out the powers conferred on the Government to constitute Tribunals for adjudication of industrial disputes and for performing other such functions as may be assigned to them under the Act. If, therefore, the appropriate Government in respect of demands finds that there is apprehension of strike or lock-out, it is always open to refer the dispute and then issue orders u/s 10(3). We have seen earlier that u/s 11(3), only certain powers under the C.P.C. are conferred on the Board, Court, Labour Court, Tribunal and National Tribunal, as are vested in the Civil Court. A literal reading would mean that other powers which the Court may have while hearing a suit under the Code of Civil Procedure, cannot be exercised by the Industrial Tribunal. The Industrial Tribunal it will thus follow will have no powers to grant interim reliefs under Order 39 Rules (1) & (2). Thus, it is clear that the Tribunal constituted under the Act can exercise only those powers of the Civil Court which are conferred upon it u/s 11(3) and not other powers. 2 Grindlays Bank (supra) in our opinion concludes the issue.

16. In so far as Grindlays Bank Ltd. (supra) is concerned, we may reproduce the following paragraphs Grindlays Bank Ltd. Vs. Central

Government Industrial Tribunal and Others, :

6..... But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or

incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this

nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication

in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

7..... The Tribunal and other authorities have the same powers as are vested in Civil Courts under the Code of Civil Procedure, 1908, of (a)

enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, and (c)

issuing commissions for the examination of witnesses. Under Clause (d) thereof, the Tribunal or such other authorities have also the same powers

as are vested in Civil Courts under the Code of Civil Procedure, 1908 in respect of such other matters as may be prescribed. Although the

Tribunal or other authorities specified in Section 11 are not Courts but they have the trappings of a Court, and they exercise quasi-judicial

functions.

5. Except to the extent specified in sub-section (3) of Section 11 of the Act and the Rules framed thereunder, the provisions of the Code of

Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in Sub-section (I).....

17. We must always bear in mind that the Tribunal is a creature of statute and can only exercise those powers which are conferred upon it

expressly or by necessary implication.

18. Apart from the power conferred u/s 10, the other power conferred on the Industrial Tribunal is the power to adjudicate claims u/s 33-C and

hear complaints u/s 33-A. This power to entertain a complaint is when an employer contravenes the provisions of Section 33 during the pendency

of proceedings before the Conciliation Officer, etc. This power u/s 33-A as now recognised, permits the concerned workman or an Union to

move the appropriate forum, who shall adjudicate upon the complaint as if it was a dispute referred to or pending before it in accordance with the provisions of the Act. What this means is that in the situation covered by Section 33 an employer cannot do certain acts without permission of the Tribunal etc. or can do such acts as contemplated u/s 33(2) after complying with the provisions. If the employer acts otherwise, the remedy is to move u/s 33-A. There can be no dispute that the Tribunal while deciding such a complaint may u/s 10(4) adjudicate on matters incidental thereto in respect of which breach is committed. The exercise of jurisdiction must be in respect of a matter incidental to the complaint. It must arise out of and from the complaint.

19. The other aspect of the matter is that interim relief can normally be granted only in aid of the substantive reliefs and to protect the subject-

matter till the disposal of the suit or proceedings to or prevent breach of an enforceable contract. The statutory Tribunal can only exercise

jurisdiction in respect of those matter where powers have been conferred upon it. Otherwise it is normally the jurisdiction of the ordinary Civil

Court. Gainful reference may also once again be made to the Judgment in the case of Premier Automobiles (supra). From the judgment in the case

of Premier Automobiles, it is clear that it is only in those matters that the jurisdiction of the Civil Court would stand ousted in respect of those rights

which are created under the Act, a machinery provided for adjudication and a remedy for enforcement provided thereunder. Otherwise, the Civil

Court would continue to have jurisdiction in respect of those matters covered by Section 9 of the Code of Civil Procedure. For that purpose

reference may be made to the following paragraph:

Reference of industrial disputes for adjudication in exercise of the power of the Government u/s 10(1) is so common that it is difficult to call the

remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. The remedy suffers

from some handicap but is well-compensated on the making of the reference by the wide powers of the Labour Court or the Tribunal. The

handicap leads only to this conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or

common law and not created under the Act, the remedy is not exclusive. It is

alternative. But surely for the enforcement of a right or an obligation under the Act the remedy provided *uno flatu* in it is the exclusive remedy. The legislature in its wisdom did, not think it fit and proper to provide a very easy and smooth remedy for enforcement of the rights and obligations created under the Act. Persons wishing the enjoyment of such rights and wanting its enforcement must rest content to secure the remedy provided by the Act.

20. In *Morgan Stanley Mutual Fund (supra)*, the Apex Court noted that under the provisions of the Consumer Protection Act, 1986, there was no power u/s 14 to grant any interim relief or even *ad interim* relief and that only final relief could be granted. This is for the purpose of pointing out that when a Tribunal is constituted, unless there is specific power conferred to grant relief by way of interim relief, it cannot grant the same. It may be further pointed out that reference to the jurisdiction of the Civil Court is only made for the purpose of discussing the issue whether Civil Court will have jurisdiction to grant interlocutory relief to a workman or union is not in issue and consequently have not been discussed or decided in this judgment.

21. It is in that context, that the expression "incidental thereto" has to be considered. Incidental, would be incidental for the purpose of deciding the main controversy of issue. Incidental, in our opinion, cannot be to exercise a power which has not been conferred by the Act and more so, the power conferred on a Civil Court under Order 39, Rule (2) in the course of deciding the industrial dispute u/s 10 or a complaint for that matter u/s

33-A. Unless the power is conferred it cannot be exercised, has support from the judgment in *All India Indian Overseas Bank SC and ST*

Employees' Welfare Association and Others Vs. Union of India (UOI) and Others, ; it was noted that under Article 338(8) of the Constitution of

India, while investigating a matter the Commissioner shall have all the powers of a Civil Court for the purpose of investigating and inquiring into the

matter and in particular the powers like summoning of witnesses etc. The Apex Court held that the power of a Civil Court of granting injunctions,

temporary or permanent, however, did not inhere in the Commissioner nor could such a power be inferred or derived from a reading of Clause (8)

of Article 338 of the Constitution. Section 11(4) of the I.D. Act uses similar

language.

22. The Apex Court has not concluded the issue though it was sought to be contended that it had so done. We have discussed the Judgments

earlier, to point out that in Management Hotel Imperial (supra), the issue was left open as noted by the Apex Court itself in the Delhi Cloth and

General Mills Co. (supra). The matter, in our opinion, does not stand concluded also by the Judgment in the case of Bharat Petroleum Corporation

Ltd. (supra) where what was in issue was whether a Civil Suit could be filed to restrain the employees from going on strike. It is only incidentally

that some reference had been made to the powers of the Tribunal under the Act. Section 11(3) of the Act or for that matter Sections 37 and 38 of

the Specific Relief Act have neither been noted nor considered. In our opinion, therefore, the judgment in the case of Bharat Petroleum

Corporation Ltd. (supra) cannot be said to be the judgment which has decided the issue in controversy. In so far as judgment in Lokmat

Newspapers Pvt. Ltd., (supra) what has been considered was a complaint under the provisions of the MRTU & PULP Act. The Division Bench

of this Court while considering the provisions of MRTU and PULP Act has taken a view that under the Act, it is open to the Tribunal constituted

under it not only to grant preventive relief of the nature contemplated under Order 39, but also prevent the employer from terminating the services

of a workman in suitable cases. From the observations in Grindlays Bank (supra) on the contrary the Apex Court has clearly set out that the

Tribunal cannot exercise the powers under the CPC except those set out in Section 11(3) and the rules framed thereunder. The expression

"incidental" however, has been considered in some judgments. In Workmen of British India Corporation Ltd. v. British India Corporation Ltd.

1965 II LLJ 433, the Apex Court observed under at p. 435:

35..... We have already set out the term of reference, and it is obvious that there is no expression reference in that term to the amalgamation of

dearness allowance with wages. It is, however, urged on behalf of the appellants that this question arises incidentally out of the matter under the

reference and should have been dealt with by the Tribunal particularly as dearness allowance is part of wages, though the two have been treated

separately for various reasons. It is true that in a sense dearness allowance is

part of wages; but we are of opinion that the question of amalgamation of dearness allowance with basic wages raises specific and distinct issues some of which may be of far-reaching effect in the region to which this industry belongs and such a question cannot be considered as a mere incidental matter arising out of the reference as to increase in wages

In Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, , the observations of the Apex Court are as under at p. 427:

..... The word ""incidental"" means according to WEBSTER'S NEW WORLD DICTIONARY:

happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence secondary or minor, but usually associated.

Something incidental to a dispute"" must therefore mean something happening as a result of or in connection with the dispute or associated with the

dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the

root of the main thing to which it is an adjunct"".

Therefore, it is clear from the above, that what is incidental is something associated with the main reference and which is secondary or minor and

an adjunct to it. It cannot be something not associated with the main reference.

23, The other test would be to examine whether in the event, interim relief in the form of injunction is granted how will the said order, if not

complied with, be enforced or executed. In so far as the award is concerned, interim or final, once an award is made by the Tribunal then the

provisions of Sections 16, 17 and 17-A of the I.D. Act will apply in the matter which provides for the form of the award, publication of the award

and commencement of the award. Section 18. sets out on whom the award is binding and Section 19 sets out the period of operation of settlement

of the award. If the award pertains to a monetary benefits which can be calculated in terms of money its enforcement can be u/s 33-C of the I.D.

Act, otherwise the only other provision under the Act is criminal prosecution for failure to comply with the award considering Section 29. Apart

from these provisions, there is no other provision under the Act by which the Tribunal can enforce an interim order passed by it assuming power

has been conferred on it. As we have noted from the judgment in Grindlays Bank (supra), the Apex Court in no uncertain terms has observed that

except to the extent specified in Sub-section (3) of Section 11 of the Act and the Rules framed thereunder the provisions of C.P.C. 1908 are not

applicable to the proceedings before the authorities mentioned in Sub-section (1). The power conferred on the Civil Court under Order 38 or

Order 39 or Order 40 have not been conferred on the Tribunal. There is nothing in the Act or the Rules either express or implied which could be

read that the Tribunal has a right to grant interim relief in the form of injunction. No Court or Tribunal will grant a relief if it is incapable of enforcing

it either by execution or otherwise. We have earlier noted that the; expression ""incidental"" would not include an interim relief by way of preventive

injunction. No judgment of the Apex Court has been cited to show that the matter has been concluded by any judgment. On the contrary in Delhi

Cloth" & General Mills (supra) the Apex Court has noted that the judgment of Management, Hotel Imperial the question was posed but not

answered. Therefore, even if it was held that there was such a power to grant relief there is no power or mechanism for the relief to be enforced. If

there be a power to grant relief there must also be power to enforce the relief. In that context it must be held that no power is conferred on the

Tribunal or the other authorities under Chapter II to grant relief of injunction.

24. A perusal of Section 33-A of the I.D. Act by itself would make it clear that the jurisdiction to entertain a complaint is only in the event the

employer has contravened any of the provisions. There is no power conferred u/s 33-A to file a complaint in respect of threatened illegal change in

the conditions of service. The relevant portion of Section 33-A, reads as under:

Where an employer contravenes the provisions of Section 33 during the pendency of proceedings, before a Conciliation Officer, Board, an

Arbitrator, Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing in the

prescribed manner...

25. It is, therefore, clear that the jurisdiction to entertain a complaint only arises in cases where there is contravention of Section 33 and not

apprehended contravention. u/s 33, during the pendency of proceedings, as set out thereunder, an employer cannot in regard to any manner

connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them

immediately before the commencement of such proceeding; or for any misconduct connected with the dispute, discharge or punish, whether by

dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the

proceeding is pending. Therefore, the employer's powers as to what he can do or cannot do are set out under sub-sections (2) and (3). It is,

therefore, clear on reading of Section 33 and Section 33-A that the jurisdiction u/s 33-A is only in those matters which will be covered by Section

33 and or/ read with Section 9-A. It is, therefore, clear that there is no power of granting preventive relief in the Tribunal constituted under the Act.

26. The expression "incidental", therefore, u/s 10(4) while considering Section 33-A cannot include the power of granting any interim preventive

relief. The jurisdiction to entertain the complaint is only on contravention of the provisions of Section 33-A. We are in agreement with the view

taken by the Division Bench of the Kerala High Court in the case of Dhanalakshmi Bank Ltd. v. Parameswara Menon (supra).

27. Coming now to the facts involved in this case, the Union had filed a complaint u/s 33-A of the I. D. Act for various reliefs as set out therein on

the ground that during the pendency of the matter before the Industrial Tribunal, the employer had altered the conditions of service without

complying with the mandatory provisions and without following the requirements u/s 9-A of the I.D. Act. In the application, the interim reliefs

prayed for, were as under:

(a) Pending hearing and final disposal of the complaint, this Honourable Tribunal be pleased to grant interim relief in terms of prayer (ii), (iii) and

(iv) of the complaint.

(b) Pending hearing and final disposal of the complaint, this Honourable Tribunal be pleased to grant interim relief ad interim relief in terms of

prayer (ii), (iii) and (iv) of the Complaint".

28. Prayer Clause (ii) in the main complaint was a prayer that the Tribunal be pleased to call upon the employer to cease and desist from changing

the service conditions of the workmen. In other words, they could only be conditions of service which had not been changed at the time of filing of

the complaint. Similarly, prayer Clause (iii) was to direct the employer not to implement the seven day running system on the departments hitherto

run on six day Sunday off system. The change had been effected by notice dated August 19, 1997. The complaint had been filed on December 30,

1997. Prayer Clause (iv) was for an injunction or order in the nature of an injunction from running the departments hitherto run on six days Sunday

off system in the seven day running system and further restraining the employer from making any changes in service conditions as set out in

paragraph 23 or at all. In answer to the complaint and the application for interim relief, apart from raising objections as to the maintainability of the

complaint at the behest of the Union, it was contended that there was no change in conditions of service of any workman which required notice u/s

9-A of the I.D. Act. Apart from that, it was contended that transfers, if any of workman in the factory, have been effected as per the provisions

and in accordance with the terms of contract of the appointment order of the workman concerned as well as of the provisions of the standing

orders of the company and such transfers effected cannot be termed as change in service conditions of the workmen. In that light of the matter it

was contended that the application for interim relief ought to be rejected.

29. We may sum up the propositions. For a Tribunal or Labour Court to exercise powers under the expression incidental, it must:

(1) arise from the terms of the reference and must be incidental to answering that reference and not an issue falling beyond or outside the terms of the reference.

(2) the interim relief granted should be capable of being enforced under the provisions of the I.D. Act

(3) Complaint u/s 33-A can be entertained only on an employer committing a breach of Section 33 and not an apprehended breach or contravention.

30. Considering the above tests, in our opinion, the learned single Judge did not correctly address himself to the tests to be applied and in the light

of that, the Judgment dated May 2, 2003 is set aside and the Order of the Industrial Tribunal is restored. Appeal accordingly allowed. No order as

to costs.