

(2012) 10 DEL CK 0401

In the Delhi High Court

Case No : LPA 698 of 2012 and CM No. 17787 of 2012

The Co-operative Store Ltd., Superbazar and Another	APPELLANT
Vs	
Superbazar Karamchari Hitesh Sangathan (Regd.) and Others	RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2013) 133 DRJ 129

Hon'ble Judges : Rajiv Sahai Endlaw, J; D. Murugesan, J

Bench : Division Bench

Advocate : A. Sunderam and Mr. N.K. Kaul, with Mr. Ankur Mody and Ms. Perna Mehta, for the Appellant; Ravindra S. Garia, for R-1. Ms. Monika Garg and Ms. Shilpa Singh for R-2, Ms. Sweetie Manchanda, for R-3 and Mr. Mohit Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, Chief Justice

1. This intra-court appeal impugns the order dated 9th October, 2012 of the learned Single Judge in so far as, while issuing notice of W.P.(C) No. 6426/2012 preferred by the respondent No. 1 Union, also, till the next date of hearing i.e. 22nd November, 2012, staying the "order" dated 5th October, 2012 of the appellant No. 1 impugned in the writ petition. The counsel for the respondent No. 1 Union being on caveat, as well as the counsels for the respondent No. 2 (Officer Liquidator, The Co-operative Store Limited) and the respondent No. 3 (The Central Registrar, The Cooperative Societies) appear. Considering the nature of the order impugned and the appeal, with the consent of the counsels, the appeal was heard finally on 12th October, 2012 and the matter posted to today for orders. The writ petition was filed, as aforesaid, impugning the "order" dated 5th October, 2012 which is as under:-

THE COOPERATIVE STORE LTD - SUPER BAZAR

CONNAUGHT CIRCUS, CONNAUGHT PLACE

NEW DELHI - 110001

Date: 05.10.2012

NOTICE

All the workers of The Cooperative Stores Ltd. Super Bazar are hereby informed that the bidder had committed to provide employment for a period of three years to the evaluation committee constituted by the Hon''ble Supreme Court for bid's evaluation. The recommendations of the evaluation committee were accepted in its entirety by the Hon''ble Supreme Court vide its order dated 26.02.2009.

The commitment to provide employment for three years stands fulfilled as on 04.10.2012. Now therefore, in keeping with the aforesaid, all the workers are directed not to report for work w.e.f. 05.10.2012. Full and final payment of all the dues up till 04.10.2012 has already been credited to respective bank accounts.

For The Cooperative Store Ltd - Super Bazar

Managing Director

2. The contention of the respondent No. 1 in the writ petition is, that in the year 2004-05 Trade Unions of workers of the "Super Bazar" filed several Special Leave Petitions before the Supreme Court against the closure of "Super Bazar" and for revival thereof; that the Supreme Court, for revival, allowed several bidders and finally accepted the bid of the appellant No. 2 M/s. Writers and Publishers Ltd., who though took over the management of "Super Bazar" during the year 2009-2011 but did not take any steps for revival thereof; that in the circumstances the respondent No. 3 The Central Registrar, The Co-operative Societies issued notice of last opportunity to the management to take immediate steps for revival of "Super Bazar"; that the act of suddenly declaring the employment of more than 950 employees as having come to an end is illegal and is in violation of the right to life and livelihood of the members of the respondent No. 1 Union; that the members of the respondent No. 1 Union were in fact absorbed as the employees of the Society; that the "order" dated 5th October, 2012 violates Articles 14 & 16 and is in violation of principles of natural justice.

3. The argument, in a nutshell though made at great length with reference to plethora of documents (stated to be relevant and not filed by the respondent No. 1 Union along with the writ petition), of the senior counsel for the appellants is that as per the terms approved by the Supreme Court, the appellant No. 2 M/s Writers and Publishers Ltd. while taking over the management of "Super Bazar" was obliged to retain the erstwhile employees of "Super Bazar" for a period of three years till 4th October, 2012 only and has no obligation to continue with the employees thereafter and hence the Notice supra dated 5th October, 2012 impugning which the writ petition was filed. In fact the maintainability of the writ

petition is also challenged.

4. Per contra, the contention of the counsel for the respondent No. 1 Union and supported by the counsel for the respondent No. 3 The Central Registrar, The Cooperative Societies is that the writ petition is maintainable; reliance in this regard is placed on Federal Bank Ltd. Vs. Sagar Thomas and Others, ; it is controverted that the erstwhile workers of "Super Bazar" were to continue in employment only for a period of three years; it is argued that the Notice supra dated 5th October, 2012 though does not purport to be of retrenchment or termination, in fact effects retrenchment and termination in contravention of the provisions of the Industrial Disputes Act, 1947 and this Court in exercise of powers under Article 226 is entitled to intervene in such gross acts of violation of rights of a large number of workers. It is also argued that the appellant No. 2 M/s Writers and Publishers holds only 64% of the share in "Super Bazar" and the balance is with the Government.

5. The counsel for the respondent No. 2 Officer Liquidator of the "Super Bazar" has contended that though Officer Liquidator is a member of the Board of "Super Bazar" but no Board meeting of which the said Officer Liquidator had notice, was held in this regard.

6. Of course the senior counsel for the appellants has controverted the aforesaid contentions and has also referred us to the short order of the Supreme Court in (2000) 10 SCC 311 to contend that the Supreme Court has deprecated such practice of interim order of stay of termination, holding that the same would tantamount to usurpation of public office without any right in the event of the writ petition being finally dismissed.

7. We have intentionally noted only the skeleton of the arguments of the respective counsels since the order impugned, though in the presence of the appellants (who appeared on advance notice when the writ petition came up first for hearing) is still in the nature of an ex parte order as the same was passed without the appellants having any opportunity to file the reply/counter affidavit etc.

8. However what we find is that though the learned Single Judge has granted such an "ex parte order", no reasons of satisfaction as to the prima facie case of the respondent No. 1 Union or any finding of the ingredients of irreparable loss or injury in favour of the respondent No. 1 Union have been stated in the order. Though the Notice dated 5th October, 2012 does not purport to be of termination or retrenchment but it is the claim of the respondent No. 1 Union that it is in fact so; besides, the effect thereof, in any case, is of termination. We find the Supreme Court, in State of U.P. and Others Vs. Sandeep Kumar Balmiki and Others, to have intervened, where a Single Judge of the High Court had by an interim order stayed the order of termination and the intra-court appeal there against by the employer State of U.P. had been dismissed merely with a direction to the Single Judge to dispose of the writ petition at an early date, and to have

held that interim order staying the order of termination could not be passed in view of the fact that if such relief is granted, the writ petition shall stand automatically allowed without permitting the parties to place their respective cases at the time of final hearing of the writ petition. The Supreme Court further held the High Court to have "fallen in grave error in staying the order of termination during the pendency of the writ petition" and set aside the said interim order, further holding that "final relief could not be granted at the interim stage". Even otherwise, ordinarily no interim stay against termination is granted in as much as upon the challengers showing the termination to be bad, direction for payment of full back wages and consequential benefits can always be granted. Here the learned Single Judge, as aforesaid has not given any reasons whatsoever. We, in the circumstances, without entering into the various controversies raised and leaving the same open to be urged by the respective parties before the learned Single Judge, vacate the "ex parte interim stay" granted by the learned Single Judge on 9th October, 2012. We however grant liberty to the parties to approach the learned Single Judge for reopening the hearing in the writ petition. We further make it clear that it shall be open to the learned Single Judge to, after completion of pleadings, if not in a position to dispose of the writ petition itself expeditiously, (which would be the preferred mode), decide the application for stay after hearing the parties and without being influenced in any manner whatsoever by this order.

The appeal is allowed accordingly.

No costs.