

(2005) 02 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No"s. 14972 to 15001 of 2004

Woodlands Hotel Private Limited

APPELLANT

Vs

Krishna Nayak and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 (1), 33 (2) (b), 33 (3)

Citation : (2005) 106 FLR 784 : (2005) 3 KarLJ 372 : (2005) 3 LLJ 508

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Kasturi Associates for P.D. Vishwanath, for the Appellant; Sriyuths N.G. Phadke, Meerabai, R. Ravishaian and Vikaram Phadke, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—These petitions are filed challenging the order passed on I.A. No. III dated 27-12-2004 by the Industrial Tribunal, Bangalore, in serial Applications 5 to 10 and 12 to 34 of 2003 in I.D. No. 101 of 1999 vide Annexures-A21 to A29. Petitioner is also challenging a common order dated 22-3-2004 passed on I.A. No. 5 vide Annexure-B.

2. Petitioner is a company registered under the provisions of the Companies Act and is engaged in the business of Lodging and Boarding. Thirtieth respondent namely, the workmen of Woodlands, raised an Industrial Dispute pertaining to the various charter of demands which have been referred to the Industrial Tribunal, Bangalore for adjudication and the same is pending as ID. No. 101 of 1999. According to the petitioner there exists no dispute in terms of the provisions of the Industrial Disputes Act, 1947, The Tribunal has no jurisdiction to entertain this reference. Majority of the workman resigned their membership from the HMS Union and joined the Karnataka State Hotels and Resorts Staff and Workers" Union on enemas basis as per the communication dated 14-9-2001 (Annexure-D), After resigning from the HMS Union and after joining the KTUC Union, respondents submitted similar charter of demands as in I.D. No, 101 of

1999 and applied before the Tribunal praying for impleading them as necessary party in ID. No. 101 of 1999. The said prayer was rejected. During the pendency of the dispute, the workmen of the petitioner establishment started intermittent illegal strike and ultimately Hon"ble Minister for Labour intervened and the strike was withdrawn and dispute was settled with that union. Petitioner states that the charge-sheets were issued to thirty workmen and enquires were held in the matter. Ultimately, all the thirty workmen were dismissed from the services of the petitioner. In the light of pendency of the dispute, petitioner filed approval Applications 5 to 10 and 12 to 34 of 2003 seeking approval u/s 33(2)(b) of the Industrial Disputes Act, 1947.

3. I.A. No. III was filed by the management seeking that the I.As. filed by the respondents for interim relief may be kept in abeyance in terms of the affidavit filed supporting I.A. No. III. It was opposed by workmen. Thereafter, after hearing, the Tribunal has chosen to reject the same in its order dated 21-12-2003. A review petition was filed by petitioner and the same came to be rejected. Petitioner is therefore before me challenging the order dated 27-12-2003 (Annexure-A1 to Annexure-A29 and Annexure-B).

4. Notice was issued and respondents have entered appearance and a detailed statement of objections along with various details is filed in the matter opposing the petition.

5. Heard the learned Counsels for the parties.

6. Learned Counsel for the petitioner would say that the learned Trial Judge is wrong in rejecting the application filed by the management in terms of I.A. No. III. He contends that the learned Judge ought to have deferred the matter in the light of jurisdictional issue pending in I.D. No. 101 of 1999. Learned Counsel relies on various judgments in support of his submission. Per contra, learned Counsel for the respondent would say that the proceedings u/s 33(2)(b) is an independent proceedings in terms of the law laid down by the Supreme Court. Therefore the learned Counsel says that there is no need to defer these matters. Insofar as review petition is concerned, learned Counsel says that the learned Judge has chosen to dismiss I.A. Nos. 4 and 5 in the given circumstances. He supports the order.

7. After hearing, I have carefully perused the material on record. Admitted facts reveal of a pending dispute in I.D. No. 101 of 1999. Dismissals have taken place during the pendency of the industrial dispute and in those circumstances several serial applications have been filed by the management seeking approval of the action taken by the management u/s 33(2)(b) of the I.D. Act, During the pendency of the proceedings, two applications have been filed by the workmen I.A. Nos. I and II. I.A. No. I is with regard to interim relief. I.A. No. IT is with regard to eviction in the matter. When these applications were pending, I.A. No. III was filed by the petitioner seeking for deferring of the I.A. Nos. I and III on the ground that the dispute in ID. No. 101 of 1999 has not been properly

espoused and for that reason the Tribunal ought to defer the matter. The same was opposed. Learned Trial Judge by a detailed order has chosen to hold that there is no need to defer the matter in the light of jurisdiction u/s 33(2)(b) of the Act. Let me see as to whether this finding is sustainable in law or not in the given set of facts.

8. According to the petitioner, approval applications were filed by way of abundant precaution in terms of the judgment of the Supreme Court. The Supreme Court in *Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, has ruled that an employer can make an application u/s 33(2)(b) to save itself from the charge that it contravened Section 33 and such an application is maintainable. The question here is as to whether the Tribunal proceedings are to be deferred on account of certain jurisdictional issue said to have been raised by the petitioner in the pending adjudication. The case-laws are in abundance in this regard.

The Bombay High Court in *Filmistan (Private) Ltd., Bombay Vs. Syed Taki Bilgrami and Another*, has ruled as under:

"On behalf of the petitioner Sri Vakil urged before us that the petitioner as well as the labour union are represented by legal practitioners in the main reference which is pending before the Industrial Tribunal, that the applications of the petitioner u/s 33(2)(b) of the Industrial Disputes Act are in the nature of interlocutory proceedings in the main reference and that therefore the Advocates who represent the petitioner and the union in the main reference are entitled to appear for the petitioner and the concerned workmen in the applications u/s 33(2)(b) of the said Act. We do not find any substance in this argument. Section 33(2)(b) applies where an employer discharges or punishes, whether by dismissal or otherwise, a workman for any misconduct not connected with the dispute", i.e., the dispute which is pending in proceeding referred to in Sub-section (1) of Section 33. In this case the workmen are alleged to have been dismissed by the petitioner for misconduct not connected with the dispute which is being adjudicated upon by the Industrial Tribunal in the main reference. The Advocates who are entitled to appear in the main reference for the petitioner and the union, are, therefore, not entitled to appear as of right in the proceedings u/s 33(2)(b)".

(emphasis supplied)

9. In *Tata Iron and Steel Company Limited's* case, the Supreme Court has ruled that the application filed u/s 33(2)(b) can in a sense, be treated as an incidental proceeding, but it is a separate proceeding all the same, and in that sense, it will be governed by the provisions of Section 33(2)(b) as an independent proceeding. It is not an interlocutory proceeding properly so called in its full sense and significance it is a proceeding between the employer and his employee who was no doubt concerned with the main industrial dispute along with other employees; but it nevertheless a proceeding between two parties in respect of a matter not covered by the said main dispute.

10. In 1970 II LLJ 210, the Supreme Court again ruled as under:

"12. In the context of this background, it is difficult to see how an order granting or refusing approval u/s 33(2)(b) can be regarded as an order of interlocutory character. The application u/s 33(2)(b) is not for an interlocutory relief in a pending conciliation proceeding. It is a totally distinct and separate proceeding which becomes necessary by reason for the ban imposed by the Legislature on the employer from discharging an employee during the pendency of the conciliation proceeding. The cause of action for making the application has nothing to do with the industrial dispute in the pending conciliation proceeding. Nor does its determination depend upon the merits of such industrial dispute. The inquiry which is required to be held by the conciliation officer for the purpose of considering whether to grant or to refuse the application is a totally distinct and separate inquiry unconnected with the main conciliation proceeding. It is no doubt true that the application is required to be made because a conciliation proceeding is pending but that cannot impart the character of interlocutory proceeding to the application. The application is made for the purpose of lifting the legislative ban imposed in the interest of industrial peace and the conciliator has to apply his mind to the relevant considerations for the purpose of deciding whether to lift the ban or not. We are therefore, of the view that the order made u/s 33(2)(b) is not an order of interlocutory character".

(emphasis supplied)

11. Recently, Delhi High Court in 2004 LLR 173, after noticing several judgments has ruled in para 6 reading as under:

"In my view the plea advanced by the petitioner cannot be accepted because it would lead to an in just and incongruous situation where an employer in order to avoid the impact of Section 33 of the Act merely raises a plea that the reference of industrial dispute is incompetent and therefore, no industrial dispute exists. This would lead to a totally uncalled for situation where on a mere plea of invalidity of the reference raised by a party, the statutory impact of Section 33 gets stalled. This could amount to giving primacy to the plea of an interested party over the legislative intent expressed in Section 33 of the Act. In my view the proper course for the petitioner in the present case would have been to adopt the route indicated in Section 33(2)(b) of the Act seeking permission of the Tribunal to dispense with the services of respondent 3".

12. Learned Counsel for the respondents relies on a few judgments in support of his case. Kamla Bai Vs. Divisional Superintendent, Central Railway, Nagpur, is a judgment of Assam High Court. That was a case in which the Court was considering with regard to jurisdiction u/s 33(2) after closure of the main dispute.

In Tata Iron and Steel Company Limited's case, is another judgment which would show that Section 33(2)(b) will not automatically come to an end merely because the main industrial dispute has in the meanwhile been finally determined.

In P.D. Sharma Vs. State Bank of India, is a judgment of the Supreme Court wherein the Supreme Court has considered that permission u/s 33(3) is not necessary after the principal industrial dispute coming to an end.

The last judgment relied on by the learned Counsel is Management, Chitavalsah Jute Mills Ltd. Vs. Workmen of Chitavalsah Jute Mills, . That was a case in which the Supreme Court has considered with regard to stay of reference in terms of the facts narrated in the body of the petition.

None of these cases come anywhere near the plea of deferring the proceedings in terms of the request made by the employer. All these judgments are clearly inapplicable and distinguishable to the facts of this case.

13. From these judgments what is clear to me is that the proceedings u/s 33(2) (b) is an independent proceeding by itself. It is covered by independent provision of the I.D. Act. This independent proceedings cannot be sought to be deferred on the ground of want of proper espousal etc. by the employer. If such argument is accepted, it would result in holding that the approval application is an incidental proceedings in a reference matter. That is not the intention of the Legislature. Moreover, if such pleas are accepted, it would result in unnecessary delay in disposal of approval applications. The order on approval application is to see that the rights of the workman are not jeopardized on account of the dispute in question. The object of the I.D. Act is speedy disposal of cases and not prolongation of cases, The deferring request would result in prolongation of dispute which would be contrary to the very object of the Act. Looking from any angle, no case as such is made out as held by the Tribunal. If an employer is so sure that there is no need to seek approval. He is at liberty to withdraw the approval application and face the consequence of non-compliance of Section 33(2)(b). After filing applications, the employer cannot stall the proceedings on a ground said to have been raised in the pending dispute. Looking from any angle no case is made out in the given circumstances.

14. Petitions stand rejected. I see that the approval applications are pending fairly for a longtime. In these circumstances, I deem it proper to direct the Tribunal to dispose of the same on or before 31-12-2005.

15. Ordered accordingly. No costs.