(2011) 08 DEL CK 0489

Delhi High Court

Case No: Writ Petition (C) 585 and 589 of 1997

Taj Services Ltd.	APPELLANT
Vs	
Industrial Tribunal-I and Others	RESPONDENT

Date of Decision: Aug. 17, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B, 18(1), 18(3), 22, 33

Citation: (2011) 7 AD 37 : (2011) 181 DLT 793 : (2011) 125 DRJ 60 : (2011) 131 FLR 281 : (2012) 2 LLJ 433 : (2011) LLR 1133

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Vinay Bhasin and H.L. Raina, for the Appellant; H.K. Chaturvedi, for workmen, V.K. Tandon and Mamta Tandon, for R-1, for the Respondent

Final Decision: Allowed

Judgement

S. Muralidhar, J.
W.P. (C) No. 585 of 1997 is directed against the Award of the Industrial Tribunal th (''Tribunal'') in ID No. 56 of 1988 of 30September 1996 as well as the Award of the W.P. (C) Nos. 585 and 589 of 1997Page 1 of 11 th same date in ID No. 10 of 1989. It also challenges the order of reference dated 28March 1988 made by the Delhi Administration to the Tribunal.

2. W.P. (C) No. 589 of 1997 is directed against the Award dated 30September 1996 of the Tribunal in ID No. 56 of 1988 as well as the Award of the same date in ID No. 3 th of 1988. It also challenges an order dated 28March 1988 of the Delhi Administration referring the dispute to the Tribunal.

Factual background

3. The Petitioner, which is headquartered in New Delhi, has its printing division at Noida in Uttar Pradesh. It is stated that in the printing division, it has installed

sophisticated printing machines and employs about 70 workmen. The printing division at Noida in Uttar Pradesh is stated to be registered under the Uttar Pradesh Factories Act. Its day-to-day operations and its registration for sales tax is under the local laws of Uttar Pradesh applicable at Noida. The contributions under the ESI Act are made with the Regional Director, ESIC, Kanpur in Uttar Pradesh. It is the Petitioner''s case that the printing division at Noida is, therefore, an industry carried on by the company as a separate unit and that for any dispute arising in the said printing division, the appropriate government is the Government of Uttar Pradesh.

4. According to the Petitioner, one Mr. T.M. Nagarajan claiming to be the office bearer of the New Delhi General Mazdoor Union (''NDGMU'') raised a dispute in the conciliation office at Delhi making certain financial demands. The Petitioner states that at the time the above dispute was raised, there already existed a long-term wage and settlement dated 2nd November 1987 between the workmen employed at the printing division at Noida and the Petitioner management. The settlement was signed by the Taj Services Limited Employees Union (''TSLEU''), which was an internal union and represented the workmen employed in the printing division at Noida. A copy of the settlement enclosed with the writ petition records that the settlement was to remain in th force for a period of three years up to 30 September 1990. The settlement covered the basic salary grades as well as dearness allowance (''DA''), the house rent allowance (''HRA''), leave travel assistance (''LTA''), privilege leave and casual/sick leave, leave encashment, death/disablement cases and other terms and conditions. Clause 9 of the settlement states that the workmen and the Union would not, either individually or jointly, raise any dispute, demand or claim involving any financial burden on the management during the period of operation of the settlement.

5. The DA by an order dated 28March 1998 referred for adjudication to the Tribunal the following disputes:

1. Whether the workmen are entitled to dearness allowance linked with cost of living index? If so, what directions are necessary in this regard?

2. Whether the workmen are entitled to house rent allowance and lunch allowance? If so, what directions are necessary in this regard?

3. Whether the workmen are entitled to uniform? If so, what directions are necessary in this regard?

6. On 20th July 1989 the Petitioner management filed a written statement in ID No. 56 of 1988 raising a preliminary objection to the jurisdiction of the Tribunal at Delhi to entertain the dispute raised by the workmen at the Noida printing division. Secondly, an objection was raised to the locus standi of the NDGMU to raise a dispute on behalf and of the Respondent workmen. Thirdly, it was pointed out that the settlement dated 2November 1987 entered into by the Petitioner management with the TSLEU covered the demand of dearness allowance as well as the house rent

allowance and further, the said settlement was subsisting and binding on the parties. On merits, it was denied that the workmen were entitled to any enhancement in DA, which according to the management, had been linked with the consumer price index (''CPI'') as issued by the State of Uttar Pradesh from time to time. It was contended that the workmen were already receiving enhanced DA in terms of the said scheme. In addition to HRA, the workmen were also entitled to be provided LTA. Privilege leave had been increased and encashment of casual leave was also permitted.

7. With some of the workmen going on strike, the management issued charge sheets and dismissed some of them from service after holding an enquiry. On 13May 1989 the workmen filed a complaint u/s 33A of the Industrial Disputes Act, 1947 (''ID Act''). This was registered as Complaint No. 10 of 1989. In the said complaint, it was pointed out that the workmen, who had been dismissed, were active members of the NDGMU and they had been victimized for espousing the case of the other workmen and in pursuing the charter of demands with the management. It was stated that the said workmen are ''protected workmen'' in terms of Section 33(3) ID Act and therefore, the management ought to have sought permission of the Labour Court before dismissing them from services. They claimed that the management had violated the provisions of Section 33 of the ID Act. In the written statement filed in reply to the said complaint, the management pointed out that the said complaint was not maintainable. It was submitted that there was no industrial dispute pending before the Tribunal at the time of dismissal of the workmen. It was submitted that ID No. 56 of 1988 does not in fact constitute an industrial dispute. In any event, the said dispute related to DA, HRA, lunch allowance and uniform. Even if the said disputes were decided in favour of the workmen, it would not benefit any of the dismissed workmen and therefore, they were not concerned with the said dispute at all.

8. The Tribunal took up both the disputes, i.e., one referred in ID No. 56 of 1988 as well as Complaint No. 10 of 1989, for hearing together. It may be mentioned here that another group of workmen filed a complaint which was numbered as ID No. 3 of 1988 u/s 33A of the ID Act. This was also decided by the Tribunal on the same date. In relation to the decision of the Tribunal in ID No. 3 of 1988, W.P. (C) No. 587 of 1997 has been filed. The issues framed by the Tribunal in Complaint No. 10 of 1989 as well as Complaint ID No. 3 of 1988 read as under:

1. Whether ID No. 56 of 1988 has been referred by Delhi Administration in excess of its jurisdiction as alleged by management?

2. Whether the reference ID No. 56 of 1988 is illegal invalid and without jurisdiction?

3. Whether the complaint is not maintainable as alleged?

4. Whether the complaints have been terminated after holding a valid and proper enquiry?

5. Whether the termination of services of complainants is in violation of Section 33 of the ID Act?

6. To what relief any are the workmen entitled?

9. The issue concerning the jurisdiction of the Tribunal to entertain the industrial dispute was decided in favour of the workmen. The factors that weighed with the Tribunal were that the management had its office and also the printing office at Delhi, the letter of appointment of one of the workmen, i.e., Mr. Giyan Chand was issued from the Delhi office, the full and final settlement of that workman at the time of his dismissal took place at Delhi and a cheque was issued to him in the name of a bank at New Delhi. The PPF account of the workmen was being maintained at Delhi. The th Delhi High Court had, by an order dated 10April 1987, restrained the Union and in the said petition the management itself had filed a written statement accepting the jurisdiction of the Delhi High Court.

10. Referring to Section 18 of the ID Act, the Tribunal held that the settlement dated and 2November 1987 was otherwise than by way of conciliation proceedings and therefore, was not a bar to the workmen seeking reference of disputes to the Tribunal. Moreover, the NDGMU was not a party to the settlement. As regards the locus standi of the NDGMU, the Tribunal held that it was a question of internal management of the Union and the employer could not question the locus standi particularly when throughout the conciliation proceedings as well as the proceedings before the Tribunal, the NDGMU had admittedly acted for and on behalf of the workmen.

11. In ID No. 56 of 1988 the Tribunal came to the conclusion that the settlement arrived at between the management and the TSLEU so far as the demand of DA and HRA were concerned, was "fair and proper" and "need not be interfered with". As far as the demand for lunch allowance and uniform was concerned, the Union had agreed to unconditionally withdraw the said demands. The subsequent settlement of the year 1990 and 1993 also showed that these demands were given up. Consequently, the demand of the workmen for lunch allowance and uniform was rejected and it was held that the payment of DA and HRA would be in terms of the settlement between the parties which was "just and fair". An Award was passed in the above terms.

12. As regards the complaint in ID Nos. 10 of 1989 and 3 of 1988 the issue concerning the failure of the management to seek formal approval of the Tribunal u/s 33(2)(b) of the ID Act was decided in favour of the workmen. It was held by the Tribunal that since ID No. 56 of 1988 related to the general demands of the employees of the management, the present workmen were directly interested or connected with the said reference and their services could have been terminated only with the approval of the Tribunal. Consequently, the Tribunal directed the management to reinstate all the ten dismissed workmen in service together with

50% back wages from the date of their dismissal from service till the date of the Award and thereafter, they would be entitled to full wages till the date they are reinstated. The arrears were directed to be paid within a period of three months of the Award becoming enforceable failing which these workmen would be entitled to claim simple interest @ 12% per annum on the said sum.

13. While directing notice to issue in the two writ petitions on 11February 1997 this Court stayed the impugned Award. During the pendency of the writ petitions the workmen filed an application u/s 17B of the ID Act. The said application was allowed and the workmen are being paid 17B wages.

Submission of counsel

14. Mr. Vinay Bhasin, learned Senior counsel appearing on behalf of the Petitioners and contended that in view of the binding settlement dated 2November 1987 the workmen were precluded from raising any dispute or claim involving any financial burden on the management as long as the agreement subsisted. Consequently, if the reference made to the Tribunal of the dispute by the Delhi Administration was itself bad in law, then ID No. 56 of 1988 was not maintainable. If this issue had been decided first in favour of the management, then the question of violation of Section 33 of the ID Act during the pendency of the said dispute would not have arisen. Therefore, if the dispute in ID No. 56 of 1988 had been decided first by the Tribunal, there would be no need for it to consider the other complaints made by the workmen concerning violation of Section 33 ID Act. He next submitted that the Delhi Government was not the appropriate government to refer the dispute for adjudication. On the question of territorial jurisdiction, the conclusion arrived at by the Tribunal was erroneous. The workmen were all employed at the management''s printing division at Noida which was registered under the Uttar Pradesh Factories Act and was subject to the jurisdiction of the State of Uttar Pradesh. On the merits of the dismissal of the ten workmen, it is submitted that they clearly violated the terms and conditions and the dismissal followed a regular enquiry in accordance with law. There was no question now of the reinstatement since the Petitioner company had itself remained th closed with effect from 19March 2001. Mr. Bhasin relied upon the decisions in New Shorrock Mills v. Maheshbhai T. Rao ILR 1996 1129 (SC), Engineering Laghu Udyog Employees'' Union v. Judge, Labour Court and Industrial Tribunal 2004 SCC (L&S) 974, Fazilka Coop. Sugar Mills v. Jatinder Kumar Gupta ILR 2007 673, United Bank of India Vs. Sidhartha Chakraborty, U.P. State Electricity Board v. Laxmi Kant Gupta ILR 2009 1 and Ministry of Textile Vs. Murari Lal Gupta and Another, to urge that the order for reinstatement of the workmen was, in the facts and circumstances of case, unsustainable in law. Referring to the decisions in Tata Engineering and Locomotive Company Limited Vs. Their Workmen, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , and Management, Essorpe Mills Ltd. Vs. Presiding Officer, Labour Court and Others, it was submitted that the binding settlement governing a majority of the workmen

would preclude the reference of a dispute involving the matters of settlement to the Tribunal for adjudication. He pointed out that the Labour Court itself had, in ID No. 38/2006/2002 concerning another workman and M/s. Taj Palace Hotel, held the settlement to be binding.

15. Appearing for the workmen, Mr. H.K. Chaturvedi, learned Counsel submitted that the settlement was not entered into with the NDGMU which raised the dispute in ID No. 56 of 1988. Clearly, ten of the workmen had been dismissed from service during the pendency of the said industrial dispute. Once it was clear that there was a violation of Section 33 of the ID Act the consequence of reinstatement of the dismissed workman had to automatically follow. Mr. Chaturvedi also referred to the decision in Jaipur Zila Sahakari Bhoomi Bank Limited v. Shri Ram Gopal Sharma and Engineering Laghu Udyog Employees'' Union v. Judge, Labour Court and Industrial Tribunal. He also referred to the decision of the Bombay High Court in Industrial Perfumes Ltd. v. Industrial Perfumes Workers'' Union 1998 (79) FLR 367 and the Supreme Court in Ashok Kumar Sharma Vs. Oberoi Flight Services,

Section 33 and 33A ID Act

16. Section 33 of the ID Act mandates that the conditions of the service of the workmen have to remain unchanged during the pendency of the proceedings before the Tribunal. While such dispute is pending no order can be passed by the management by way of discharge of punishment of dismissal of the workmen or otherwise in terms of Section 33(2) of the ID Act for any misconduct not connected with the dispute pending in the court provided that an application is made before the Tribunal for approval of the action taken by the employer. In the present case, the management was disputing the validity of the order making reference of the dispute to the Tribunal by the Delhi Administration. For the management to file an application u/s 33(2)(b) of the ID Act seeking the approval of its action, would be to concede that in fact the reference was properly made to the Labour Court by the Delhi W.P. (C) Nos. 585 and 589 of 1997 Page 7 of 11 Administration. The objection to the jurisdiction was also on two fundamental grounds which went to the root of the matter. One was that the appropriate government is not the Delhi Administration but the Government of Uttar Pradesh since the printing division of the Petitioner, where the workmen in question were employed, was at Noida and was registered as a factory within the meaning of the Uttar Pradesh Factories Act. All other statutory requirements were in terms of the local laws of Uttar Pradesh and were being complied with by the Petitioner by filing an appropriate application and returns with the authorities in Uttar Pradesh. Secondly, the objection to the reference was also on the ground that the very dispute referred to the Labour Court was the subject matter of a binding settlement which bound every worker of the th factory at Noida for a period of three years, i.e. up to 30September 1990. If indeed these issues were decided in favour of the management then the inevitable result would be the rejection of the said claim in ID No. 56 of 1988.

17. The workmen''s complaint u/s 33A of the ID Act would be maintainable only if there was a contravention of Section 33 of the ID Act by the employer during the pendency of any valid dispute proceedings before the Labour Court or Tribunal. In Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., during the pendency of the settlement that was binding on the workmen, disputes which formed the subject matter of the settlement were referred for adjudication by the Tribunal. Referring to Section 18(3) of the ID Act read with Section 18(1) thereof, the Supreme Court held that there were two kinds of settlements. The first were those arrived at outside the conciliation proceedings. The second category was those arrived at in the course of conciliation proceedings. The latter category was binding on all the parties to the industrial dispute. It was categorically held that "settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."

18. In Tata Engineering & Locomotive Company Ltd. v. Their Workmen it was held that a settlement could not be weighed in golden scales and the question whether it was just and fair had to be answered on the basis of principles different from those that applied when an industrial dispute was under adjudication. It was held that "if the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did."

19. In Essorpe Mills Ltd. v. Presiding Officer, Labour Court the learned Single Judge of the High Court had held that unless conciliation proceedings were pending at the time of the dismissal of the workmen, Section 33 ID Act would not be attracted. It was held that once a strike notice was issued u/s 22 of the ID Act, conciliation proceedings were deemed to have commenced and no further notice from the Conciliation Officer was necessary. The decision of the High Court was negatived by the Supreme Court. It was found on facts that the strike was illegal because six weeks'' advance notice was not given. The conciliation proceedings had to be in accordance with the requirements of law and since the notice in terms of Section 22 of the ID Act was absent, there were no valid conciliation proceedings. Consequently, it was held that the application u/s 33A of the ID Act by the workmen was misconceived as there was no need for the management to have taken the approval of the Labour Court for the action in dismissing the workmen in terms of Section 33(2)(b) of the ID Act.

20. Turning to the facts of the present case, the Tribunal ought to have first decided whether the reference in ID 56 of 1988 was valid. The preliminary issue regarding territorial jurisdiction has been dealt with in an unsatisfactory manner by the Tribunal. The specific plea taken by the management about the location of the printing division at Noida, about the workmen being employed at such printing division, and about the statutory requirements of the Uttar Pradesh laws being met by the Petitioner with reference to its printing division at Noida, have not been dealt with by the Tribunal. The conclusion of the Tribunal that it had territorial jurisdiction to decide the reference is unsustainable in law for the aforesaid reasons. However, the present petitions need not be decided on this point alone.

21. The Tribunal also erred in holding that for the purposes of the validity of the and reference, the settlement dated 2nd November 1987 was not binding on the workmen. Subsequently, in the same Award the Tribunal held the settlement to be fair and reasonable and binding on the workmen for the purposes of DA and HRA. These and findings are clearly inconsistent and contradictory. If indeed, the agreement dated 2November 1987 was binding on all the workmen, then clearly during the subsistence of such agreement, no reference could be sought by the workmen of the disputes concerning DA and HRA to the Tribunal. On this short ground, it should have been held by the Tribunal that the reference itself was bad in law.

22. At this juncture, it must be noticed that no sooner had the reference been made, the management filed a writ petition in this Court challenging it. However, the said writ petition was at that stage not entertained by this Court. The management was permitted to raise the question regarding validity of the reference after the Award was made by the Tribunal. An objection is now raised by the learned Counsel for the workmen that the management should not be permitted at this stage after so many years to question the validity of the reference itself. This submission is without merit. The management having already approached this Court earlier challenging the reference and having been permitted to raise it before the Tribunal, cannot be prevented from questioning the decision of the Tribunal on the point in these proceedings.

Conclusions

23. In the considered view of this Court, the settlement dated 2November, 1987 was binding on all the workmen and no reference with regard to the matters covered by the settlement could have been made by the Delhi Administration in the teeth of the said settlement. It mattered little that the dismissed workmen were themselves not party to the settlement. The wording of the settlement indicates that it was with the majority Union. As explained by the Supreme Court in Barauni Refinery Pragatisheel Shramik Parishad and Tata Engineering and Locomotive Co. Ltd. the said settlement would bind every workman.

24. Since both on the issue of territorial jurisdiction and the binding nature of the settlement the reference to the Tribunal was invalid, the question of violation of Section 33(2)(b) of the ID Act by the management in not seeking approval of the Tribunal for its action of dismissing the ten workmen would not arise. Since this Court has found that the reference itself is bad in law, the consequence is that no application u/s 33A of the ID Act could have been filed by the workmen complaining of violation of Section 33(2)(b) of the ID Act by the management. As a result, the impugned orders of the Tribunal allowing the applications u/s 33A and directing reinstatement of workmen with 50% back wages are unsustainable in law and are hereby set aside. The Award is also hereby set aside.

25. The writ petitions are allowed in the above terms, but in the circumstances, with no order as to costs.