IN THE HIGH COURT OF BOMBAY AT GOA
***

WRIT PETITION NO. 106 OF 1999

The Goa MRF Employees' Union, a registered trade union, represented by its President, Shri Rohidas Naik, with its registered office at Saidham Dhavalimol, P.O. Quelem, Ponda, 403 401. ... Petitioner

Versus

1. MRF Ltd., a company incorporated under the Companies Act, 1956, having its factory at Post Box No.1, Ponda, Goa, 403 401, through its Senior General Manager, E. M. Mathai, and

2. The Industrial Tribunal of Goa, Junta House, Panaji, Goa. ... Respondents.

Mr. Arshad Shaikh and Mr. V. Menezes, advocates for the petitioner.

Mr. G. K. Sardessai and Mr. S. G. Bhobe, advocates for respondent no.1.

CORAM : S. J. VAZIFDAR,J.

DATE OF RESERVING THE JUDGMENT : 28th March, 2003.

DATE OF PRONOUNCING THE JUDGMENT : 2nd May, 2003.

JUDGMENT

The petition raises an interesting question of law of considerable importance. Does the Industrial Tribunal have the power to grant interim reliefs, including in the nature of injunctions, in a complaint filed before it under section 33A of the Industrial Disputes Act, 1947?

2. The petitioner is a registered Trade Union. Its members are workmen employed by respondent no.1. Respondent no. 2 is the Presiding Officer of the Industrial Tribunal who passed the impugned Order.

3. The settlement arrived at between the parties on 20th November, 1991, was due to expire on 30th September, 1995. The petitioner had served a notice of termination dated 29th July, 1995, on respondent no.1. By a letter dated 15th February, 1996, the petitioner as the sole bargaining agent of the workmen of respondent no.1 served its Charter of Demands on respondent no.1. The Charter of Demands was in respect of conditions of service of the workmen of respondent no.1. Respondent no.1 in turn served its Charter of Demands by a letter dated 7th February, 1996. Thereupon negotiations ensued between the petitioner and respondent no.1. The same however did not culminate into a settlement.

4. The petitioner therefore by its letter dated 29th August, 1996, called upon the Labour Commissioner to intervene in the dispute and to commence conciliation proceedings. The petitioner also forwarded a justification statement alongwith the said letter. The Labour Commissioner in Goa incidentally is also the Ex-Officio Secretary of the Government for the purpose of making references under Section 10(1) of the Industrial Disputes

Act, 1947, of disputes where conciliation has failed and the failure report is forwarded. The Labour Commissioner made a failure report on 28th October, 1996. As he failed to make a reference the petitioner filed Writ Petition No.135 of 1997 before this Court seeking a Writ of Mandamus directing the Labour Commissioner in his said capacity as the Ex-officio Secretary of the Government, to refer the dispute under Section 10(1), to the Industrial Tribunal for adjudication. The petition was disposed of by an order dated 9th June, 1997, recording the statement made on behalf of respondent no.1 therein that the dispute had been referred to the Industrial Tribunal by an order dated 5th June, 1997. The dispute is pending adjudication before the Industrial Tribunal.

5. The petitioner's case is that in the meanwhile, to pressurize the workmen, respondent no.1 started illegally changing their service conditions to their prejudice. The petitioner by a letter dated 20th August, 1997, called upon respondent no.1 to refrain from going ahead with the same. It is not necessary for me to consider whether or not respondent no.1 in fact altered or changed the conditions of service of its workmen to their prejudice. This is a question of fact which must be decided by the Tribunal.

For the purpose of this judgment counsel are agreed that

the judgment be confined to the question of law and proceeded therefore on the basis that the changes are to the prejudice of the workmen.

6. Respondent no.1 having refused to withdraw the changes the petitioner filed a complaint under Section 33 A of the Industrial Disputes Act inter-alia for a declaration that respondent no.1 had illegally changed the service conditions of the workmen and for a direction calling upon respondent no.1 to cease and desist from changing the service conditions of the workmen and not to implement the seven-day running system on the departments hitherto run on a six-day Sunday off system. Prayer (IV) of the application was for interim reliefs restraining respondent no.1, pending the hearing and final disposal of the complaint, from running the departments hitherto run on a six-days Sunday off system in the seven-day running system and to further restrain the respondents from making any changes in the service conditions as set out in para 23 or at all.

7. The Industrial Tribunal by the impugned Order dated 3rd September, 1998, dismissed the petitioner's application for interim reliefs. Relying upon a judgment of the Kerala High Court in **Dhanalakshmi Bank Ltd. vs. Parameswara Menon, 1980 II LLJ 45,** the Tribunal held that it had no power to grant the interim reliefs sought as they

were in the nature of injunctions and that the provisions of the Act do not confer powers on the Tribunal to grant such orders.

8. As the decision of the Industrial Tribunal is based solely on the judgment of the Kerala High Court in **Dhanalakshmi Bank Ltd. vs. Parameswara Menon, 1980 II LLJ 45,** I will refer to it after dealing with the other judgments. Before dealing with the judgments, it is necessary to refer to Sections 10(4) and 33A of the Act which are as under:-

> **"S.10(4):** 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.
>
> **S.33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. -**
>
> Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, -
>
> (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and
>
> (b) to such arbitrator, Labour Court,

> Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

9(a). In **Kamarhatty Company Ltd. vs. Ushinath Pakrashi, 1959 II LLJ 556 (S.C.)**, there was a dispute pending before the Industrial Tribunal between a number of jute mills in West Bengal and their employees, including the appellant. During the pendency of that dispute, the appellant laid off the respondent on the ground that the ration shop maintained by the appellant in which the respondent worked was closed following the end of rationing and that the respondent, therefore, became surplus. Nine persons, including the respondent, were selected for retrenchment on the principle of "last come first go". The appellant applied under Section 33 of the Act to the Industrial Tribunal for permission to retrench the employees. Before that the respondent filed an application under Section 33A. The Tribunal came to the conclusion that the lay-off was justified. The respondent appealed successfully to the Appellate Tribunal. The permission to retrench the respondent was refused. The Supreme Court granted special leave limited only to the question whether an order of reinstatement can be made on an application under Section 33A. Answering the question in the affirmative, the Supreme Court held:-

> "In our opinion, the answer to the limited question on which the special leave has been granted can only be one in view of the language of S.33A. That section lays down that where an employer contravenes the provision of S.33 during the pendency of proceedings before a tribunal, any employee aggrieved by such contravention may make a complaint in writing to the tribunal and on receipt of such complaint the tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly. <u>It is thus clear that a complaint under S.33A of the Act is as good as a reference under S.10 of the Act and the tribunal has all the powers to deal with it as it would have in dealing with a reference under S.10.</u> It follows, therefore, that the tribunal has the power to make such order as to relief as may be appropriate in the case and as it can make if a dispute is referred to it relating to the dismissal or discharge of a workman. In such a dispute it is open to the tribunal in proper cases to order reinstatement. Therefore, a complaint under S.33A being in the nature of a dispute referred to a tribunal under S.10 of the Act, it is certainly within its power to order reinstatement on such complaint, if the complaint is that the employee has been dismissed or discharged in breach of S.33." (emphasis supplied)

(b). It is true that the specific question presently under consideration, was not argued before the Supreme Court. However, while considering Section 33 A, the Supreme Court in the sentence emphasized above, clearly held that the Tribunal has all the powers to deal with a complaint under Section 33A as it would have in dealing with a reference under Section 10. I am unable, therefore, to agree with Mr. Sardessai's submission that the judgment must be

limited to mean that the Tribunal while dealing with a complaint under Section 33A has all the powers as it has while dealing with a reference under Section 10 only for the purpose of final adjudication and nothing more.

(c). For reasons I shall state later, I have come to this conclusion even independent of this judgment.

10. The next question logically therefore, is whether while dealing with a reference under Section 10 the Tribunal has the power to grant interim reliefs including in the nature of injunctions.

11(a). In **The Management Hotel Imperial, New Delhi & Ors. vs. Hotel Workers' Union, AIR 1959 SC 1342,** the Supreme Court dealt with a similar question. Three hotels and their employees were concerned in that case. In Hotel Imperial there was a reference under Section 10 of the Act in respect of a large number of matters, including the case of 22 workmen whom the management had decided to dismiss on 4th October, 1955. The reference however, did not refer to 19 workmen whom the management had decided to dismissed on 7th October, 1955. The dismissal of these nineteen workmen was eventually confirmed. These nineteen workmen in the meantime applied under Section 33A of the Act on the ground that they had been suspended without pay for an indefinite period and had thus been punished in

breach of Section 33 of the Act. No application was made by Hotel Imperial for permission to dismiss the nineteen workmen.

In the case of all three hotels applications were filed on behalf of the workmen for interim reliefs directing that the employees be paid certain amounts. Interim reliefs were granted directing the hotels to pay certain amounts to the workmen. As pointed out by Mr. Sardessai, no injunction was granted. The three hotels filed appeals against the orders granting interim relief which were dismissed by the Labour Appellate Tribunal. Thereupon the hotels applied for special leave to appeal to the Supreme Court, which was granted.

(b). One of the questions that fell for the consideration of the Supreme Court was whether the tribunal had the power to grant interim reliefs. Holding that under Section 10(4) the tribunal did have the power to grant interim reliefs, the Supreme Court observed thus:-

> "21. After a dispute is referred to the tribunal under S.10 of the Act, it is enjoined on it by S.15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An 'award' is defined in S.2(b) of the Act as meaning 'an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto'. Where an order referring an industrial dispute has been made specifying the points of dispute for adjudication, the

> tribunal has to confine its adjudication to those points and matters incidental thereto; (S.10(4)). It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of the opinion that there is no force in this argument, in view of the words 'incidental thereto' appearing in S.10(4). 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 under 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." (emphasis supplied)

After observing the difference between a final award, interim award and interim reliefs, the Supreme Court held:-

> "Interim relief, on the other hand, is granted under the power conferred on the tribunal under S.10(4) with respect to matters incidental to the points of dispute for adjudication."

(c). It is true that the interim orders granted by the Tribunal as pointed out by Mr. Sardessai were not in the nature of injunctions. It is however, important to note that in the aforesaid paragraph the Supreme Court considered an example of where the "question of reinstatement" is referred to a tribunal for adjudication and held that the question of granting interim relief till the decision of the tribunal "with respect to the same", would be a matter incidental thereto under section 10(4).

The Supreme Court thus expressly held that interim relief in the nature of an injunction can be granted "where it is admissible". That this is so was held by the Supreme Court itself in **Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad, (1999) 6 SCC 275,** which I shall refer to shortly. Whether the Tribunal ought to grant an injunction in a given case or of a particular nature is an altogether different question from whether the Tribunal has the power or jurisdiction to grant it.

(d). To say the least, the Supreme Court in any view of the matter did not hold that monetary relief is the only interim relief that the tribunal can grant under Section 10(4). Nor did it hold that an injunction cannot be granted.

(e). I am unable to agree with Mr. Sardessai's submission that the observations of the Supreme Court are neither ratio nor obiter dicta. The question whether interim reliefs could be granted in proceedings under Section 10 or not squarely fell for consideration. The observations regarding the power to grant interim reliefs can hardly be said to be mere casual observations. They constitute at the very least, obiter dicta. Thus, in my view, the Supreme Court in the case of **Hotel Imperial (supra),** held that under Section 10(4) the tribunal has the power to

grant interim reliefs, including in the nature of injunctions.

(f). The question whether an interim order is an award within the meaning of 2(b) of the Act and must, therefore, be published under Section 17 of the Act in order to make it enforceable, was expressly kept open in paragraph 23. Mr. Sardessai's contention that the Supreme Court in paragraph 22 in fact held that an interim order is not an award under Section 2(b), is not correct. In paragraph 23, the Supreme Court clearly stated:-

> "We do not think it necessary to decide for the present purposes whether an order granting interim relief of this kind is an award within the meaning of S.2(b) and must therefore be published under S.17."

For the purpose of this petition, it is not necessary for me to decide this question either and I would leave it open.

12(a). In **The Delhi Cloth and General Mills Co., Ltd. vs. Shri Rameshwar Dayal & Anr. AIR 1961 SC 689,** the respondent, an employee of the appellant, was transferred from the night shift to the day shift in accordance with the Standing Orders. At that time an industrial dispute was pending. The respondent Sharda Singh failed to report for work in the day shift and was marked absent. He reported for work on the night shift,

but was not allowed to work on the ground that he had been transferred to the day shift. The respondent thereafter made an application to the Industrial Tribunal under Section 33A of the Act contending that the aforesaid action amounted to an alteration in his conditions of service, which was prejudicial and detrimental to his interest and that as the alteration was made against the provisions of Section 33 of the Act, he applied for necessary reliefs from the tribunal under Section 33A of the Act. After having been given another opportunity, the appellant took disciplinary action against the respondent and he was ultimately dismissed. As the dispute was pending, the respondent contended that the permission of the Industrial Tribunal should have been taken before the order of dismissal was passed. In the meantime, Section 33 and Section 33A of the Act were amended with effect from 10th March, 1957. The amendment provided that where an employer intended to take action in regard to any matter connected with the dispute, or in regard to any misconduct connected with the dispute, he could only do so with the express permission in writing of the authority before which the dispute was pending. However, where the matter in regard to which the employer wanted to take action in accordance with the Standing Orders applicable to a workman was not connected with the dispute, or the misconduct for which action was proposed to be taken was not connected with the dispute, the employer could take such action as he thought

proper subject only to this, that in case of discharge or dismissal, one month's wage should be paid and an application should be made to the tribunal before which the dispute was pending for approval of the action taken against the employee by the employer. The appellant acted under the amended provision. The respondent thereupon filed another application under Section 33A of the Act in which he complained that the appellant had terminated his service without the express permission of the tribunal and that this was a contravention of Section 33 of the Act. He therefore prayed for necessary interim reliefs. The tribunal granted an interim order directing the appellant to permit the respondent to work and that in the event of the appellant's failing to permit him to work the respondent would be paid his full wages after he reported for duty. Ultimately, the application was dismissed due to a technical defect. After rectifying the same, the respondent filed another application identical to the earlier one. After certain proceedings which are not relevant for the present purpose, a similar interim relief was passed by the tribunal on the fresh application. This order was challenged by the appellant before the High Court. An alternative submission made by the appellant was that the tribunal had no jurisdiction to pass an interim order of reinstatement, or in lieu thereof, payment of full wages to the respondent even before considering the questions raised in the application under Section 33A of

the Act on the merits. The High Court held that the order of the tribunal granting interim reliefs was within its jurisdiction and was justified.

(b). The Supreme Court held that the interim order was erroneous in law. It was held that where the tribunal is dealing with an application under Section 33A 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. The Supreme Court in paragraph 7 held as under:-

> "(7) The same two points which were raised in the High Court have been urged before us. We are of opinion that it is not necessary in the present case to decide the first point because we have come to the conclusion that the interim order of May 16, 1957, is manifestly erroneous in law and cannot be supported. 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, Hotel Imperial v. Hotel Workers' Union, AIR 1959 SC 1342)** we are of the opinion that where the tribunal is dealing with an application under S.33A of the Act and the question before it is whether an order of dismissal is against the provisions of S.33 it would be wrong in law for the tribunal to grant reinstatement or full wages in case the employer did not take the workman back in its service as an interim measure. It is clear that in case of a complaint under S.33A based on dismissal against the provisions of S.33, the final order which the tribunal can pass in case it is in favour of the workman,

would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the tribunal to justify the dismissal : See **Punjab National Bank Ltd. vs. All-India Punjab National Bank Employees Federation, AIR 1960 SC 160** where it was held that in an inquiry under S.33A, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of S.33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under Section 33A. Therefore, when a tribunal is considering a complaint under S.33A and it has finally to decide whether an employee should be reinstated or not, it is not open to the tribunal to order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal. The interim relief ordered in this case was that the workman should be permitted to work : in other words he was ordered to be reinstated; in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of the opinion that <u>such an order cannot be passed in law as an interim relief,</u> for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under S.33A. As was pointed out in **Hotel Imperial's case, AIR 1959 SC 1342** ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside. We therefore allow the appeal set aside the order of the High Court as well as of the tribunal dated May 16, 1957,

granting interim relief."(emphasis supplied)

(c). I do not read the judgment as having held that the tribunal does not have the power to grant interim reliefs. Nor do I read it as having held that the tribunal does not have the power or the jurisdiction to grant interim reliefs in the nature of an injunction. What the Supreme Court held was that the interim relief granted in that case ought not to have been granted. This is clear from the fact that the Supreme Court observed that it was of the opinion that "such an order cannot be passed in law as an interim relief" and not that interim reliefs cannot be granted. The judgment deals therefore not with the power or the jurisdiction of the Tribunal to grant interim reliefs, including in the nature of injunctions but with the manner of exercise of discretion while considering an application for the same.

13. The observations of the Supreme Court in paragraphs 49 and 50 in **Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad, (1999) 6 SCC 275** clearly assist the petitioner and read as under:-

> "49. It is because of the aforesaid provision of Section 59 of the Maharashtra Act that the referred dispute under Section 10 of the ID Act got disposed of. However, the fact remains that on the failure report submitted by the Conciliation Officer the appropriate Government had thought it fit to prima facie hold that the dispute was a real one which required adjudication by the competent court under the ID Act. It is also necessary to note that in such references received by the competent court

under the ID Act in appropriate cases, the court to which such references are made has ample jurisdiction to pass interim orders and if the court had found that the impugned retrenchment order was required to be stayed even though it had been passed after conciliation proceedings were over and when there was no prohibitory order from any authority such retrenchment order could have been stayed. Further implementation of the impugned change could have been stayed vide **Hotel Imperial vs. Hotel Workers' Union and Hind Cycles Ltd. Workmen.**(emphasis supplied)

50. It is also to be noted that in the facts of the present case, as already held by us on Point 1, the conciliation proceedings had not terminated when the impugned order was passed. The result was that Section 33(1) got violated and the appellant became liable to be punished as per Section 31(1) of the ID Act incurring a penalty for being convicted of an offence punishable with imprisonment for a term which may extend to 6 months or with fine or with both. Thus the impugned order cannot but be held to have been passed with undue haste. The intention behind passing such a hurried order was obviously to cut across and pre-empt the submission of failure report by the conciliator on the one hand and its consideration by the State on the other and even for avoiding the future possibility of a reference under the ID Act and also the future possibility of the Court's intervention by way of interim relief against such order. But to crown it all, by such undue hurry the appellant made itself liable to be punished and incurred a criminal liability for the same. All these consequences unequivocally project only one picture -- that the impugned order was passed in a great hurry and with undue haste. This conclusion is inevitable on the aforesaid facts which have remained well established on the record of the present case. Consequently, agreeing with the view of the Division Bench in the impugned judgment it must be held that the respondent's complaint was well sustained at least under clause (f) second part of Item I of Schedule IV and as the impugned order was passed with undue haste the inevitable result is that by the said act the appellant is liable to be treated as guilty of 'unfair labour practice'."

There is no doubt that by these observations the Supreme Court clearly held that the tribunal has power to grant interim reliefs, including in the nature of injunctions in complaints under Section 33A of the Act. Mr. Sardessai however, contended that these were mere casual or passing references and, therefore, constitute neither ratio nor obiter dicta. I am unable to agree. The Supreme Court made these observations while dealing with the conduct of the appellant in trying to avoid the grant of interim reliefs. In this context the question of the existence of power to grant interim reliefs necessarily fell to be decided. In any event the Supreme Court thought it necessary to decide the same. That is sufficient to constitute the observations, obiter dicta at least, if not ratio decidendi itself.

14(a). If there is any doubt remaining, it is set at rest by a judgment of a Division Bench of this Court in **Bharat Petroleum Corporation Ltd., Mumbai vs. Petroleum Employees' Union, Mumbai, 2001 (2) LLN 240.** The appellant had filed a suit for a declaration that a strike notice issued by the respondent Union was illegal, for an injunction restraining the respondent from going on strike or carrying out agitational activities during the strike notice period and during such time as the matter was seized in conciliation or any reference arising therefrom and for a permanent order and injunction restraining the respondent

from going on an illegal strike. The appellant took out a notice of motion for various interim reliefs which it is important to note were in the nature of injunctions. They were, inter-alia, to restrain the respondent from proceeding and/or continuing on strike, obstructing the ingress and egress of its officers and staff into and out of inter-alia the appellant's offices and installations, holding meetings, shouting slogans, staging demonstrations within 500 mts. of the establishments of the appellant and from carrying on certain other obstructive activities.

(b). The leaned Single Judge dismissed the Notice of Motion apparently on the ground of lack of jurisdiction. The issue that the Division Bench heard at length and decided was whether a civil court could grant the relief sought in the suit as well as in the Notice of Motion. In other words, one of the questions that the Division Bench considered was whether the civil courts had jurisdiction to grant any relief which would trench upon the exclusive jurisdiction conferred upon the Industrial Tribunals by special statutes.

(c). In support of the plea of maintainability of the suit and the Notice of Motion, it was submitted on behalf of the appellant that the Industrial Disputes Act is no remedy at all, or at the highest, it is an ineffective remedy, because the Industrial Tribunal, even assuming a reference

by an appropriate Government, can only grant relief as contemplated under Section 10 of the Act and no more, which does not include the relief of permanent injunction. It was further contented that there was no power in the Industrial Tribunal to grant interim relief. B. N. Srikrishna J., speaking for the Court rejected this contention as under:-

> **"31.** Under S.7A of the Industrial Disputes Act, an Industrial Tribunal is constituted with such jurisdiction as to entertain industrial disputes relating to any matter, whether specified in the second schedule or the Third Schedule, and for performing such other functions as may be assigned to them under the Act. Reading of two Schedules appended to the Act in conjunction with the definition of expression 'industrial dispute' defined in S.2(k) of the Industrial Disputes Act, it is not possible for us to accept the contention of the learned counsel that a relief in the form of permanent injunction is beyond the jurisdiction of the Tribunal upon a properly worded reference. May be it takes time to get the relief, but the relief is possible. The wheels of gods grind exceedingly slow; but they grind exceedingly fine. So is the case with Industrial Tribunals. It is contended by Sri Cama that there is no power in the Industrial tribunal to grant interim relief. This argument is without substance. In the first place, the definition of the expression 'Award' under S.2(b) of the Industrial Disputes Act, 1947, includes an interim determination of any industrial dispute or of any question relating thereto by the Tribunal. Further, the power of an Industrial Tribunal under S.10(4) to adjudicate on matters 'incidental' to the points of dispute referred for adjudication would conceivably include its power to grant interim relief. That the Tribunal has jurisdiction to grant interim relief in a reference is no longer in doubt in view of the decision of the Supreme Court in **Hotel Imperial v. Hotel Workers Union, [AIR 1959**

> **SC 1342],** (**See** also judgment of the Rajasthan High Court in **Manager, Jaipur Syntex Ltd. vs. Presiding Officer, Industrial Tribunal,** [1990 – 1 LLJ 323], and the judgment of the Supreme Court in **Delhi Cloth and General Mills Ltd. vs. Rameshwar Dayal, Additional Industrial Tribunal,** [1960 – II LLJ, 712}, in this connection." (emphasis supplied).

(d). This judgment also supports the case of the petitioner. The interim relief which the Division Bench held that the Industrial Tribunal had the power and jurisdiction to grant, was obviously in the nature of an injunction. This was not and indeed could not seriously be disputed by Mr. Sardessai.

He however once again submitted that this judgment does not lay down any ratio to this effect as the question did not really fall for the consideration of the Division Bench. I am unable to agree. In support of the appellant's contention that the civil suit was maintainable, it was contended that there was no remedy available under the Act; that even assuming that there was a remedy it was ineffective because the Industrial Tribunal did not have the power to grant a relief of permanent injunction and that the industrial court in any event had no power to grant interim relief of the nature prayed for in the Notice of Motion. Further the reliefs in the Notice of Motion were in the nature of injunctions. The reliefs are set out verbatim in paragraph 9 of the judgment and which I have briefly referred to earlier. The question, therefore, as

to whether the Industrial Tribunal had the power to grant interim reliefs, including in the nature of injunctions, squarely fell for the consideration of the Division Bench by virtue of the submission made in support of the maintainability of the suit and the Notice of Motion. I do not see how it is open to me to hold that these were casual observations. Nor do I see how it is open to me to say that the question did not fall for the determination of the Court. I am bound by the judgment.

15(a). This leaves for consideration the judgment of the Kerala High Court in **Dhanalakshmi Bank Ltd. vs. Parameswara Menon, 1980 II LLJ 45**, relying on which the impugned order was passed. In this case the respondent filed a Writ Petition seeking to quash an order of the Industrial Tribunal dismissing the respondent's application for an interim order restraining the appellant from taking any further proceedings pursuant to a circular issued by it announcing its decision to conduct a test for promotion of personnel from clerical cadre to the category of junior officers and for direct recruitment to the cadre of executive trainees. The application was one for interim reliefs in a petition instituted by the first respondent under Section 33A of the Act. The complaint was that during the pendency of the industrial dispute, in which one of the questions referred related to the promotion policy of the appellant, the appellant had contravened the

provisions of Section 33 of the Act by altering, to the prejudice of the workmen, the conditions of service applicable to them as aforesaid.

(b). The Industrial Tribunal held that there was no provision of law under which it possessed the power to restrain the management from proceeding further in pursuance of the circular and the advertisement issued pursuant thereto.

The learned Single Judge allowed the Writ Petition filed by the respondent against the order of the Industrial Tribunal.

(c). The Division Bench of the Kerala High Court overruled the judgment of the learned Single Judge. After referring to the judgment in the **Delhi Cloth & General Mill's case** (supra), it held that the tribunal was invited by the respondent to grant an order virtually granting the very relief that had been sought for in the complaint filed under Section 33A. It further held that Section 33A does not contemplate the grant of "such anticipatory relief for prevention of any apprehended contravention of S.33"; that if and when it is established before the tribunal that there has been in fact a contravention of Section 33 of the Act by the employer, the tribunal will, in such event, pass appropriate orders granting effective relief to the workmen

so as to obliterate the consequence that may have resulted from the act of the management performed in contravention of Section 33 of the Act and that it is only to this extent that the jurisdiction of Section 33A of the Act stretches. The Division Bench observed as follows:-

> "The grant of an interim relief in the nature of injunction is not within the competence of the Tribunal since no such power has been conferred on it by any of the provisions of the Act. The decision in **Income Tax Officer, Cannanore vs. M. K. Mohammed Kunhi AIR 1969 SC 430 ,** relied on by the learned Single Judge only lays down that where a power of appeal is conferred on an authority it carries with it by necessary implication the authority to use all reasonable means the exercise of such appellate power effective such as to grant by stay of any proceeding by one party during the pendency of the appeal which would have the effect of rendering the appeal infructuous or ineffective. This principle can have no application to a case like the present one where a special **original** jurisdiction has been conferred by a statute on the Industrial Tribunal. The scope and ambit of such jurisdiction are to be gathered only from the provisions of the enactment to which the Tribunal owes its very creation."

(d). With great respect I am unable to agree with the judgment of the Kerala High Court in view of the authorities I have already referred to and in principle. It is contrary to the judgment of the Supreme Court in **Hotel Imperial's** case (supra). After the judgment in **Dhanalakshmi Bank's** case (supra), the Supreme Court delivered the judgment in **Lokmat Newspapers Pvt. Ltd.** (supra). The judgment of the Kerala High Court is clearly

contrary to the judgment of the Supreme Court in **Lokmat's** case, the only contention being that **Lokmat's** case is not binding on me as a precedent as the observations therein are neither obiter, nor constitute ratio. I have already rejected this contention. It is also contrary to the judgment of this Court in the case of **Bharat Petroleum** (supra). In view thereof also it must be held that the judgment in **Dhanalakshmi Bank's** case (supra) is not good law.

(e). I am also unable to agree with the conclusion that **Income Tax Officer, Cannanore vs. M. K. Mohammed Kunhi AIR 1969 SC 430 ,** can have no application to a case under the Industrial Disputes Act as it confers a special original jurisdiction on the Industrial Tribunal. The observations in **Mohammed Kunhi's** case (supra), pertained to a rule of interpretation of statutes. It was not restricted to the Income Tax Act, though it dealt with a provision of that Act. The ratio therein is applicable to the question under consideration. The Supreme Court in **Grindlays Bank vs. Central Government Industrial Tribunal, AIR 1981 SC 606,** while dealing with the power of the Tribunal to set aside an ex-parte award under the same Act, held in paragraph 6 as under:-

> "6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed

> thereunder giving the Tribunal jurisdiction to do so. 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."

The principle, it will be noticed, is the same as the one enunciated by the Supreme Court in paragraph 8 of **Mohammed Kunhi's** case (supra).

(f). That the Tribunal has the power to exercise discretion while granting interim reliefs, is another matter. The manner in which the Tribunal had to exercise its discretion while granting interim reliefs, including in the nature of injunction, is a question that is distinct from the question of whether the Tribunal has the power to grant such a relief. With the former, I am not presently concerned. That is an issue which the Industrial Tribunal will decide while considering the petitioner's application for interim reliefs. There is nothing in the language of Section 10 (4) of the Act that places such a limitation on the Industrial Tribunal while considering an application for interim relief. Nor is there anything in the aforesaid judgments of the Supreme Court to this effect. Indeed as I have already observed, the observations and the decisions of the Supreme Court are to the contrary.

16. Even otherwise, considering the nature of the Industrial Disputes Act in general and the provisions of Section 33A in particular, I am of the view that the question must be answered in the affirmative.

17. The preamble to the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act"), itself states that it was enacted as it was found expedient to make provision for the investigation and settlement of industrial disputes. The Act is a legislation to ensure social justice to both employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relations between the parties. In addition, it has also as its object, industrial peace, to ensure fair terms to workmen and to prevent disputes between employers and employees so that production might not be adversely affected and the larger interests of the public might not suffer. As observed by the Supreme Court in **Grindlays Bank Ltd. vs. Central Government Industrial Tribunal & Ors., AIR 1981 SC 606,** the purpose of the Act is to settle disputes between workmen and employers which, if not settled would result in strikes and lock-outs and entail dislocation of work essential to the life of the community. The scheme of the Act it was held, shows that it aims at settlement of all industrial disputes by peaceful methods and through the machinery of conciliation,

arbitration and, if necessary, by approaching the Tribunals constituted under the Act. It thus endeavours the resolution of competing claims by finding a solution which is just and fair to both the parties.

18. The purpose underlying the enactment of Section 33A of the Act was stated by the Supreme Court in **Punjab National Bank Ltd. vs. All India Punjab National Bank Employees' Federation & Anr., AIR 1960 SC 160 (para 31),** thus:-

> "31.....
> .....
> This section was inserted in the Act in 1950. Before it was enacted the only remedy available to the employees against the breach of S.33 was to raise an industrial dispute in that behalf and to move the appropriate Government for its reference to the adjudication of a Tribunal under S.10 of the Act. The trade union movement in the country complained that the remedy of asking for a reference under S.10 involved delay and left the redress of the grievance of the employees entirely in the discretion of the appropriate Government; because even in cases of contravention of S.33 the appropriate Government was not bound to refer the dispute under Section 10. That is why S.33A was enacted for making a special provision for adjudication as to whether S.33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the Tribunal and it adds that on receipt of such complaint the Tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the Tribunal to submit its award to the appropriate Government and the provisions of the Act shall then apply to the said award. It would thus be noticed that by this section an employee aggrieved

> by a wrongful order of dismissal passed against him in contravention of S.33 is given a right to move the Tribunal in redress of his grievance without having to take recourse to S.10 of the Act."

19. It is thus clear that Section 33A of the Act was introduced to confer a distinct benefit on the workmen which they hitherto did not have. They had no right to refer a dispute for adjudication. The reference could only be made by the Government under Section 10 of the Act. If the Government refused to refer the dispute the workmen had no remedy. Today the remedy would be to challenge the refusal by a writ petition. Section 33A of the Act however, now confers an additional right upon the workmen. In **The Automobile Products of India Ltd. & Ors. vs. Rukmaji Bala & Ors., AIR 1955 SC 258,** it was held in paragraph 9 that Section 33A was inserted into the 1947 Act to confer distinct benefits on the workmen "and give some additional jurisdiction and (the) powers to the authorities mentioned therein". It was further held:-

> "Section 33-A enjoins the Tribunal to decide the complaint 'as if it were a dispute referred to or pending before it' and to submit its award to the appropriate Government and provides that the provisions of the Act shall apply to the award."

20. To sum up, therefore, Section 33A of the Act gives the workmen a right to approach the tribunal directly for redressal of their grievances without the intervention of the appropriate Government, a right that they did not earlier possess. The object was to provide for a speedy

determination of disputes and to avoid multiplicity of proceedings by giving complete relief to the workmen in relation to their grievances arising out of the action taken by the employer in contravention of the provisions of the relevant sections.

21. To uphold the respondents submission would not only be contrary to the purpose of and the object in introducing Section 33A in the Act, but would in fact, defeat the intention of the Legislature altogether. In a dispute referred by the Government under Section 10 of the Act for adjudication, it has been held that the tribunal has the power and jurisdiction to grant interim reliefs, including in the nature of injunctions in view of Section 10(4) of the Act. Section 33A of the Act was intended to confer an additional and distinct benefit by permitting the workmen to make a complaint without requiring a reference in respect thereof to be made by the Central Government. To hold that interim reliefs, including in the nature of injunctions cannot be granted in a complaint filed under Section 33A of the Act, would drive the workmen to adopt the time consuming procedure under Section 10 of the Act only in order to avail of the opportunity of applying for interim reliefs – a course that the Legislature sought to avoid by the introduction of Section 33A. This in turn would deprive them of the opportunity of availing the benefit of Section 33A of the Act. Such an interpretation

would render the provisions of Section 33A of the Act nugatory in a large number of cases. This could never have been the intention of the Legislature. It would be contrary to the Legislative intent and purpose.

22. I have already dealt with the circumstances and the reasons for the enactment of Section 33A of the Act. It would be useful here to refer to the following observations of Denning L.J., in **Seaford Court Estates Ltd. v. Asher, 1949(2) ALL.E.R. 155:-**

> ".....when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive tasks of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which give rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give force and life to the intention of the legislature."

23. A Division Bench of this Court (to which I was a party), in the case of **Anand Rathi & Ors. vs. Securities and Exchange Board of India (S.E.B.I.) & Anr., 2002(2) Bom.C.R. 403,** cited the above passage with approval and went on to hold:-

> "We have, therefore, to adopt the construction that gives force and life to the legislative intention rather than the one which would defeat the same and render the protection illusory. In the matter of construction of enabling statute, the principle applicable is that if the legislature enables something to be done, it

> gives power at the same time, by necessary implication, to do every thing which is indispensable for the purpose of carrying out the purpose in view. We thus find that the S.E.B.I. has ample authority in law to take the action under section 11-B as has been taken by it."

In **Anand Rathi's** case (supra), the provisions of Section 11 and 11-B of the Securities and Exchange Board of India Act, 1992, fell for consideration. Section 11-B reads as under:-

> **"11-B Power to issue directions. --** Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary:-
>
> (i) in the interest of investors, or orderly development of securities market; or
>
> (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
>
> (iii) to secure the proper management of any such intermediary or person, it may issue such directions;
>
> (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
>
> (b) to any company in respect of matters specified in section 11-A, as may be appropriate in the interests of investors in securities and the securities market."

Following an earlier Division Bench judgment of this Court in **Ramrakh R. Bohra vs. S.E.B.I., 1998 (18) S.E.B.I. Corporate Law Reporter 543,** it was held that S.E.B.I. had

the power under Section 11 read with Section 11-B of the S.E.B.I. Act to issue an order of suspension by way of interim measures. There was no express provision conferring power on S.E.B.I. to grant interim orders. The Division Bench in **Ramrakh Bohra's** case (supra) held:-

> "It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it."

In support of the view that despite the absence of express provision the power to grant interim directions subsisted, the Division Bench in **Ramrakh Bohra's** case (supra) relied upon the judgment of the Supreme Court in **Mohammed Kunhi's** case (supra). Lastly, it was held that the power to issue directions under Section 11-B of the S.E.B.I. Act must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective, including the power to pass interim orders in aid of final orders.

24. The observations and the ratio apply to the facts of the present case. The jurisdiction of the Industrial Tribunal to grant interim reliefs, including in the nature of injunctions in a complaint under Section 33A, is not only incidental to, but necessary and essential to make the exercise of powers thereunder effective. In the

absence of such power the complaints in many, if not a majority of the cases, will be infructuous, by the time they reach hearing.

25. It has been held in a long line of decisions that it is a fairly well-established rule that an express grant of statutory power carries with it by necessary implication, the authority to use all reasonable means to make such grant effective.

26. In **Income Tax Officer, Cannanore vs. M. K. Mohammed Kunhi, AIR 1969 SC 430,** the power of the Appellate Tribunal under the Income Tax Act to grant interim reliefs fell for consideration. The Supreme Court having observed that there was no manner of doubt that by the provisions of the Act, or Income-Tax Appellate Tribunal Rules, 1963, powers have not been expressly conferred upon the Appellate Tribunal to stay the proceedings referring to the recovery of penalty or tax due from an assessee held as under:-

> "4.....
> .....
> If the Income-tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the appellate tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to

make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the appellate tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income-tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law, Cushing's Edition, Vol.1 at page 88, it has been stated:

> 'It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it.'

Maxwel on Interpretation of Statutes, Eleventh Edition contains a statement at p.350 that 'where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdictio data est, ea quoqe concessa esse vindentur, sine quibus jurisdictio explicari non potuit.' An instance is given based on Ex Parte, Martin, (1879) 4 QBD 212 at p.491 that 'where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced'." (emphasis supplied).

27. Indeed these Rules would apply depending on

the nature of the provision and the object of its enactment. Considering the nature and scope of Section 33A of the Act and the purpose for which it was enacted, I am of the view that the Tribunal must be held to have the power to grant interim reliefs, including in the nature of injunctions, as incidental or ancillary to its jurisdiction. This consideration is independent of the view I have taken earlier, but nevertheless buttressed by the same.

28. Mr. Sardessai submitted that the power to grant interim reliefs must be expressly conferred upon a court or authority. In this regard he relied upon the judgments in **Rameshwar Dubey vs. Jogindra Lal Saha & Ors., AIR 1968 Cal.234, Rameshwar Dayal vs. Sub-Divisional Officer, Ghatampur & Ors., AIR 1963, Allahabad 518.** Firstly, in those judgments the enactments which fell for consideration were construed as not vesting the authority with the power to grant interim reliefs. Whether a particular statute empowers a court/authority to grant interim reliefs must depend on the nature of the statute. The judgments do not lay down any inflexible rule as contended by Mr. Sardessai. Even in **Haji Mahabub Hossain & Ors. vs. Biswanath Nandy & Anr., AIR 1971 Cal. 381,** relied upon by Mr. Sardessai, what fell for consideration was whether by virtue of the provisions of the West Bengal Land Reforms Act, the Revenue Officer had the power to

grant injunctions under Section 151 or Order 39 Rule 2 of the Code of Civil Procedure. Section 57 of the West Bengal Land Reforms Act provided that the Revenue Officer shall, in dealing with the proceedings under the Act, exercise the powers of the civil court under the Code of Civil Procedure, for the purposes of enforcing the attendance of the witnesses, production of documents or records or in enforcing or executing the orders as if such order was a decree of a civil court. The question presently under consideration did not fall for consideration of the Court. In any event, it was not decided in those judgments. Indeed the weight of authority is clearly against such an absolute proposition.

29. In the circumstances:-

(a) Rule is made absolute in terms of prayer (a);

(b) The Industrial Tribunal shall, after hearing the parties, decide the petitioner's application for interim reliefs on merits.

Considering the issue involved in this matter the Order is

stayed for a period of twelve weeks from today to enable the respondents to carry it in Appeal.

S. J. VAZIFDAR, J.

mc.