

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.46878 OF 2002

Madras Star Hotel Employees Union,
rep. by its President,
No.3, Vidwan Sundara Mudali Street,
Nungambakkam, Chennai 600 034. .. Petitioner

-Vs-

1. The Presiding officer,
Principal Labour Court,
High Court Buildings,
Chennai 600 104.

2. The Management of Hotel
Shrilekha Private Limited
49, Anna Salai, Chennai 2. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.K. Venkatakrishnan for
M/s.K. Sunanda &
M. Vijayalakshmi

For Respondent-2 : Mr.N. Manokaran

:O R D E R

The present writ petition has been filed on behalf of Madras
Star Hotel Employees Union against the order of the Presiding Officer,
Principal Labour Court, Chennai dated 14.5.1999 in C.P.No.1050 of 1990.

2. The Union has taken up the cause of some former workmen
working under the respondent No.2. It is alleged in the writ petition that on
1.9.1990, the Management had prevented 105 workmen from reporting for duty
under the guise of retrenching all of them by a notice of retrenchment dated
31.8.1990 without any prior notice and without seeking any permission as per
Section 25-N of the Industrial Disputes Act (hereinafter called "the Act").
Subsequently, the second respondent filed an application in Form R2 on
3.9.1990 before the Joint Commissioner of Labour seeking permission under

Section 25N of the Act to retrench the workmen. The petitioner Union filed objection on 13.9.1990 and the matter was heard by the Joint Commissioner of Labour and at that stage the management of the second respondent unilaterally withdrew the application filed in Form R2. The petitioner had written a letter dated 17.9.90 to the Joint Commissioner seeking permission to prosecute the second respondent for the violation of Section 25-N of the Act.

Thereafter, the petitioner filed W.P.Nos.16873 of 1990 and 16 898 of 1990 in the High Court challenging the order of the Joint Commissioner of Labour permitting withdrawal of the application in Form R2. The writ petitions were dismissed and ultimately, writ appeals were filed by the petitioner. While disposing all the writ appeals, the Division Bench observed:

□ . . . the effect of withdrawal of application earlier filed by the Management would undoubtedly be that there was no application by management seeking permission. It is for the workmen to settle their remedies available to them if any in an appropriate forum□.

Thereafter the workmen filed C.P.No.1050 of 1990 before the first respondent Labour Court under Section 33-C(2) of the Act claiming salary for the month of September 1990, on the allegation that the management had illegally retrenched the workmen without prior permission as contemplated under Section 25-N of the Act. The said application has been rejected under the impugned order by the Labour Court on the finding that the second respondent was not an industrial establishment within the meaning of Section 25-L of the Act and as such, such provision was not applicable. This has been challenged not by the workmen, who were applicants before the Labour Court, but by the Madras Star Hotel Employees Union.

3. Chapter V-B of the Industrial Disputes Act was inserted by the Act 32/76 with effect from 5.3.1976. Section 25K relates to application of Chapter V-B Section 25K(1) provides that the provisions of Chapter V-B shall apply to an industrial establishment, not being an establishment of a seasonal character or in which work is performed only intermittently, in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The relevant portion of Section 25-L is extracted hereunder :-

□ 25-L. Definitions. - For the purposes of this Chapter, -

(a) □industrial establishment□ means -

(i) a factory as defined in clause (m) of

Section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section

(1) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of Section

2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) . . .□

4. On a perusal of the above provision it is obvious that a hotel would not come under Section 25L(a) (ii) or (iii). Learned counsel for the petitioner has contended that hotel must be taken to be an industrial

establishment since it is considered to be so under the Industrial Disputes Act. Definition of "industrial establishment" as contained in 2(ka) of the Industrial Disputes Act is obviously not applicable for the purpose of Chapter V-B in view of the specific definition contained in Section 25-L. As per Section 25-L(a)(i), industrial establishment" means a factory as defined in clause (m) of Section 2 of the Factories Act, 1948. Section 2(m) of the Factories Act defines a factory as under :-

"2(m) "factory" means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, -

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;"

5. Such definition of the Factories Act specifically excludes a hotel, restaurant or eating place. It is thus obvious that hotel is not considered as "factory" within the meaning of Section 2(m) of the Factories Act and thus it cannot be considered as an industrial establishment within the meaning of the expression contained in Chapter V-B of the Act.

6. Learned counsel for the petitioner has however contended that keeping in view the beneficial provisions of Chapter V-B, a wider meaning should be attributed to the expression industrial establishment "so as to include all industrial establishments. The expression " industrial establishment" has been defined in a wider perspective in Section 2(ka) of the Industrial Disputes Act. If the very same meaning was to be attributed to the expression as contained in Chapter VB, there was no necessity for the Parliament to include a specific definition in Section 25-L of the Act. It is obvious that the Parliament intended Chapter V-B to be only applicable to limited types of establishments and for that reason, specific restricted definition has been inserted in Section 25-L.

7. Learned counsel for the petitioner has however relied upon the decision of the Supreme Court reported in 1994(II)LLJ 883 (G.L. HOTELS LTD. etc., v. T.C., SARIN AND ANOTHER). In the context of the definition contained in Employees State Insurance Act, it was held that activity in a kitchen of a hotel is a manufacturing activity and as such the beneficial provisions of the Employees State Insurance Act, 1948 would be applicable. The definition which was construed by the Supreme Court is very much different from the present definition. The ratio of the decision is not applicable to the present case.

8. Learned counsel for the petitioner has also relied upon the decision reported in AIR 2001 SC 857 (INDIAN PETROCHEMICALS CORPORATION LIMITED AND ANOTHER v. SHRAMIK SENA AND ANOTHER). That was a case relating

to payment of retrenchment compensation under Section 25-N of the Act. However, in the said case, it was not disputed that the management is not an industrial establishment to which Chapter V-B applies, and therefore, the question now raised was neither raised nor decided in the said case.

9. Similarly the decision reported in 1999(6) SCC 439 (INDIAN PETROCHEMICALS CORPORATION LTD. AND ANOTHER v. SHRAMIK SENA AND OTHERS), which was also relating to very same organisation, is of no assistance to decide the question raised in the present case.

10. In the aforesaid view of the matter, I do not find any error apparent on the face of record in the order passed by the Presiding Officer, Principal Labour Court, Chennai.

11. Learned counsel for the petitioner has contended that even assuming that Section 25-L had no applicability, since the provisions contained in Section 25-F have not been complied with, inasmuch as the compensation had not been paid, the order of termination must be taken to be invalid. I am afraid such a question cannot be raised for the first time in a writ of certiorari, which has been filed against the order passed by the Labour Court on a proceedings under Section 33-C where such a question had not been raised. As a matter of fact, if the termination was in contravention of Section 25-F, the question should be raised in an appropriate industrial dispute and not in a proceeding under Section 33-C(2).

12. Learned counsel for the second respondent has contended that the impugned order has been passed in the application filed by the concerned workmen, who were specific applicants before the Labour Court, and the present Union has no locus standi to challenge such an order in a certiorari proceedings.

13. Even though such a contention of the learned counsel for the second respondent is supported by a Division Bench decision of Delhi High Court reported in 1974(II) LLJ 306 (YAD RAM (BY LEGAL REPRESENTATIVES) v. LABOUR COURT, DELHI AND ANOTHER), I do not feel it necessary to consider this aspect in the present writ petition, as I have upheld the order of the Labour Court on merit.

14. For the aforesaid reasons, I do not find any merit in the writ petition, which is accordingly dismissed. However, it is made clear that it would be open to the concerned workmen to pursue their remedy available under law before the appropriate forum. No costs.

28-11-2003

Index : Yes

Internet: Yes

dpk

To

1. The Presiding officer,
Principal Labour Court,
High Court Buildings,
Chennai 600 104.

2. The Management of Hotel
Shrilekha Private Limited
49, Anna Salai, Chennai 2.

□