

A M/S. B.P.L. LTD. AND ORS.

v.

R. SUDHAKAR AND ORS.

MAY 6, 2004

B [SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

*Industrial Disputes Act, 1947 :*

C S. 33(2)(b), proviso and s. 33-A—Industrial dispute referred to  
Industrial Tribunal—Operation of order of reference stayed by High  
Court—Dismissal of workmen during stay of operation of order of  
reference—Complaint u/s. 33-A—Preliminary objection by Management to  
D maintainability of complaint—Held, once operation of order of reference  
is stayed there is no dispute pending before the Tribunal so long as stay  
order remains in operation—Since by virtue of the interim order granted  
by High Court, proceedings were not pending on the date of dismissal of  
workmen, preliminary objection raised by Companies as to very  
maintainability of complaint u/s. 33A is valid and sustainable.

E *Interim order—Effect of—Discussed.*

F Certain disputes between the appellant-companies and its workmen  
were referred to the Industrial Tribunal. The Union of the workmen  
not satisfied with the order of reference, filed a writ petition before the  
High Court seeking a mandamus to the State Government for referring  
some more disputes raised by them. The Single Judge of the High  
Court while issuing notice for admission of the writ petition, by an  
interim order, stayed operation of the order of reference and the said  
interim order continued till the writ petition was finally disposed of.

G During the pendency of the writ petition the respondent-workmen  
were dismissed from service on the ground of serious misconduct. The  
respondents filed a complaint under s-33-A of the Industrial Disputes  
Act, 1947 stating that their dismissal was in contravention of s.33(2)  
of the Act and, therefore, they were entitled to be reinstated. The  
H preliminary objection raised by the management that when the dismissal

orders were passed no proceedings were pending before the Tribunal as operation of the very order of reference had been stayed by the High Court, was rejected by the Tribunal. The writ petitions and the writ appeals filed by the companies were dismissed, Aggrieved, the Companies filed the present appeals. A

On the question : whether a dispute is said to be pending before an Industrial Tribunal for the purpose of proviso to s.33(2)(b) of the Industrial Disputes Act, 1947 during the period when operation of the order of reference of dispute itself remained stayed, B

Allowing the appeals, the Court C

**HELD :** 1.1. Once operation of the order of reference is stayed, there is no question of dispute pending before the Tribunal so long as the said order remains in operation *because reference precedes dispute*. Looking to the terms of the interim order granted by the High Court staying the very operation of order of reference it could not be said that dispute was pending before the Tribunal on the relevant date, viz., the date on which the workmen were dismissed from service. It was not a case where the dispute was pending and only further proceedings were stayed. When the order of reference itself was stayed the Tribunal did not have jurisdiction to pass any further order. As such the question of either management making an application under the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 or the Tribunal passing an order on such application would not arise. In case any tribunal proceeds to pass an order in spite of stay of the operation of the order of reference by the High Court, it may amount to contempt of the order of the High Court. In case of some grave misconduct the management cannot afford to sit idle or simply wait to take action, particularly, when stay of the operation of the order of reference is obtained at the instance of Union on behalf of the workmen. [425-A-D, G] D E F

*Ravi S. Naik v. Union of India and Ors.*, [1994] Supp. 2 SCC 641, relied on. G

*Baradakanta Mishra, Ex-Commissioner of Endowments v. Bhimsen, Dixit*, [1973] 2 SCR 495, referred to. H

A *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., CSI Cmod Secretariat, Madras, [1992] 2 SCR 999, distinguished.*

*Kanoria Chemicals and Industries Ltd. and Others v. U.P. State Electricity Board and Others., [1997] 5 SCC 772, held inapplicable.*

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1.2. Both sub-sections (1) and (2) of Section 33 of the Act employ the language “during the pendency of any proceeding” which clearly convey that obligation on the part of the employer under the said Section of seeking “express permission” for the purpose of sub-section (1) or “approval” for the purpose of sub-section (2) arises only when

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there are proceedings pending on industrial dispute before the Tribunal or other specified statutory adjudicatory authorities under the Act. For the purpose of instant case, pendency of the proceedings before the Tribunal was pre-requisite condition for making an application under the proviso to s.33(2)(b) of the Act and as on the date of dismissal of

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workmen from service the interim order staying the operation of the order of reference was operative which worked as a threshold bar for proceeding with the dispute, it could not be said that the dispute was pending. In this view, the appellant companies did not contravene the provisions of Section 33(2)(b) of the Act, and the preliminary objection

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raised by them as to the very maintainability of complaint under Section 33A is valid and sustainable. [426-C-G; 430-F-G]

*Style (Dress Land) v. Union Territory, Chandigarh and Anr., [1997] 7 SCC 89.*

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2. The High Court while observing that grant of interim order did not wipe out the existence of order of reference, did not focus its attention to the actual terms of the stay order and their effect in deciding the question as to pendency of proceedings before the Tribunal.

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What an interim order means or what is its effect and or consequences of it depend upon its own terms. In case of some ambiguity or difficulty in understanding an interim order, which rarely happens, one has to understand the interim order looking to the prayer made for interim relief, facts of a given case and the terms of the interim order. In the instant case, the interim order is plain in its terms, viz., the operation

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of the order of reference was itself stayed. The effect of this interim

order was that no proceedings could commence or were pending before the Tribunal at the material and relevant time. [426-H; 427-A-C] A

3. One more factor to be kept in mind is that it is not that the workmen do not have remedy to challenge the order of dismissal. They can raise dispute challenging the said order of dismissal by initiating separate proceedings. [428-E; 431-A] B

CIVIL APPELLATE JURISDICTION : Civil appeal Nos. 2999-3011 of 2004.

From the Judgment and Order dated 14.3.2002 of the Karnataka High Court in W.A. Nos. 7205 to 7217 of 2001. C

R.F. Nariman, P. Venugopal and P.S. Sudheer for the Appellants.

S.R. Bhat, Naveen R. Nath, Ms. Hetu Arora for Ms. Anitha Shenoy and Mrs. K. Sarada Devi for the Respondents. D

The Judgment of the Court was delivered by

**SHIVARAJ V. PATIL, J.** : Leave granted.

The short and straight question, which arises for consideration is "whether a dispute is said to be pending before an industrial Tribunal for the purpose of proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act') during the period when operation of the order of reference of dispute itself remained stayed". E

In each one of these appeals appellant No. 1 is a company and appellant No. 2 is one of its shareholders. The BPL Group of Companies Karmikara Sangha (Union) had raised certain disputes on behalf of the workmen of the appellant companies. On failure of conciliation the disputes came to be referred by the Government for adjudication to the Industrial Tribunal, Bangalore (for short 'the Tribunal'), by order dated 26.2.1999. The aforesaid union, not being fully satisfied with the order of reference, filed writ petition No. 7355/99 in the High Court seeking a mandamus to the State Government for referring some more points/disputes raised by them. A learned single Judge of the High Court on 11.3.1999, at the stage of issuing notice for admission, passed the interim F  
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**A** order in the following terms :—

“The operation of the order dated 26.2.1999 bearing No. KAE 117 KA Ky VI 99 & No. KAE-117, KA KY VI 99 passed by R-1 (Annexure ‘A’ and ‘B’ to the writ petition respectively) be and the same is hereby stayed for a period of two weeks from 11.3.1999.”

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During the course of hearing the learned counsel for the parties submitted that this interim order, having been continued, was in operation till the writ petition was finally disposed of on 12.4.1999. During the pendency of the said writ petition the workmen were dismissed from the service on 31.3.1999 on the ground of serious misconduct. The aggrieved workmen (respondents herein) filed a complaint under Section 33A of the Act before the Tribunal complaining that they have been dismissed from service in contravention of the provisions contained in Section 33(2) of the Act and, therefore, they were entitled to be reinstated. The Management of the appellant companies resisted the complaint raising a preliminary objection to the effect that the orders of dismissal were passed during the period when the order of stay passed by the learned single Judge in the aforesaid writ petition No. 7355/99 was in operation and as such there was no violation of Section 33(2)(b) of the Act. It was urged that when the appellant companies took action in accordance with law no proceedings were pending before the Tribunal as the operation of the very order of reference had been stayed by the High Court. The Tribunal, by its order dated 19.5.2000, rejected the preliminary objections. The appellant companies filed writ petition Nos. 28377-28378, 28446-28450, 28452 and 28454-28458 of 2001 challenging the correctness and validity of the aforementioned order of the Tribunal rejecting the preliminary objection. The learned single Judge of the High Court dismissed the writ petitions upholding the view taken by the Tribunal. Aggrieved by and not satisfied with the order of the learned single Judge of the High Court the appellant companies filed writ appeals before the Division Bench of the High Court. The Division Bench of the High Court, fully concurring with the conclusion arrived at by the learned single Judge, dismissed the writ appeals by the common order under challenge in these appeals.

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Mr. R.F. Nariman, learned senior counsel in support of the appeals,

urged that the High Court proceeded on a wrong footing that staying the

operation of the order of reference made by the Government did not wipe out the proceedings instead of considering whether on the relevant date proceedings were pending before the Tribunal or not on account of the stay order; the learned single Judge as well as the Division Bench of the High Court did not appreciate that the Tribunal being a creature of statute derived its jurisdiction only upon an order of reference being made by the Government under Section 10 of the Act; such being the legal position the proceedings could not be deemed to have been pending as on 31.3.1999 when the workmen were dismissed from service during the period when the operation of the order of reference itself remained stayed by the High Court; the High Court has failed to distinguish the difference between stay of further proceedings and stay of reference itself; stay of operation of the order of reference being in force, the proceedings could not be deemed to have commenced as the Tribunal could not enter upon the reference itself. He urged that the Division Bench of the High Court committed a grave error in applying the decision of this Court in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. CST Cinod Secretariat, Madras*<sup>1</sup>, to the facts of the case and the real question that was required to be resolved. The said case has no bearing on the question to be decided.

In opposition, Mr. S.R. Bhat, learned advocate for the respondents, made submissions supporting the impugned judgment. He drew our attention to Section 20(3), 23 and 33(1) of the Act in support of his submissions. He placed reliance on decisions of this Court in *Kanoria Chemicals and Industries Ltd. and Others v. U.P. State Electricity Board and Others*<sup>2</sup> and *Tukaram G. Gaokar v. R.N. Shukla and Others*<sup>3</sup>. He also submitted that merely because the operation of the order of reference was stayed it could not be said that the proceedings before the Tribunal were wiped out.

On facts there is no dispute or debate between the parties.

Section 33 of the Act, to the extent it is relevant, reads :-

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. - (1)

1. [1992] 2 SCR 999.

2. [1997] 5 SCC 772.

3. AIR (1968) SC 1050

A During the pendency of any conciliation proceedings before a conciliation officer or a Barad or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -

B (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

C (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

D (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman -

E (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

F (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

G Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken

H by the employer.”

It is to be stated here itself that in writ petition No. 7534 of 1999, filed by the union on behalf of the workmen interim order was sought by themselves to stay the operation of the order of reference. It is at the instance of the union that interim order was passed by the learned single Judge, which is already extracted above.

Under sub-section (2) of the Section 33 of the Act during pendency of proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. From this provision it is clear that for seeking an approval for discharge or dismissal of a workman from service by the employer essentially proceedings in respect of an industrial dispute must be pending.

In the present case the respondent-workmen were dismissed from service on account of misconduct during the period when operation of the order of reference remained stayed. Compliance of proviso to Section 33(2)(b) would be required if the dispute was pending on the date when the workmen were dismissed from service. The Tribunal held that the dispute was pending before it notwithstanding stay of the operation of the order of reference by the Government. The said view was upheld by the learned single Judge of the High Court following the decision of this Court in *Shree Chamundi Mopeds Ltd.* case (supra). In the impugned order the Division Bench of the High Court observed that the learned single Judge rightly relied on the said decision and dismissed the writ appeals. Hence it is necessary to have a closer look at the facts of *Shree Chamundi Mopeds* and the ratio. The appellant in that case was a public limited company. It had taken on rent the premises belonging to the respondent - Church of South Indian Trust Association. The appellant company committed default in payment of rent. The respondent issued the legal notice dated 1.4.1987 calling upon the appellant company to pay the said amount. While

- A** admitting the liability to pay the appellant company stated that it was expecting certain sums of money towards developmental loan from the Government of Karnataka and as soon as the same was received it would pay the outstanding amount. Since the amount was not paid respondent issued a notice under Section 434 of the Companies Act and, thereafter,
- B** a petition was filed in the High Court under Section 433(e) of the Companies Act for winding up of the appellant company. During the pendency of that petition the appellant company claiming that it had become a sick industrial company, filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provision) Act, 1985 (for short 'the SICA'), before the Board of Industrial and Financial Reconstruction.
- C** After publication of general notice in newspapers and on intimation to the concerned parties the Board concluded that the appellant company should be wound up. The appeal filed by the appellant company against the order of the Board to the Appellate Authority for Industrial and Financial Reconstruction was dismissed on 7.1.1991. The appellant company filed
- D** writ petition in the High Court of Delhi challenging the order passed by the appellate authority. The High Court on 21.2.1991 issued notice in the writ petition returnable on 10.5.1991. On the stay petition filed in the writ petition notice was issued for 10.5.1991 and in the meanwhile operation of the order of the appellate authority dated 7.1.1991 was stayed. After
- E** dismissal of the appeal of the appellant company by the appellate authority, the winding up petition was taken up for consideration and it was allowed by a learned single Judge of the Karnataka High Court by order dated 14.8.1991. The learned single Judge of the Karnataka High Court took the view that the pendency of the writ petition in the High Court of Delhi and
- F** stay of the operation of the order of the appellate authority did not stand in the way of the court to proceed with the matter. The appellant company's appeal filed against this order of the learned single Judge was dismissed by the Division Bench of the Karnataka High Court by order dated 6.11.1991. On 26.2.1988 the respondent filed a petition seeking eviction of the appellant company from the demised premises under Section 2i(1)
- G** of the Karnataka Rent Control Act, 1961 on the ground that the appellant company was a chronic defaulter in payment of rent. In those proceedings the appellant company moved an application under Section 151 of Civil Procedure Code read with Section 22 of the SICA for stay of the said proceedings on the ground that the appellant company had been declared
- H** a sick industrial company. The said application was rejected by the Small

Causes Court by order dated 14.9.1989 taking the view that Section 22 of the SICA had no application inasmuch as proceedings instituted by the landlord for recovery of possession of the premises of which a sick industrial company is a tenant is not included among the proceedings which are required to be suspended under Section 22(1) of the SICA. Thereafter, eviction petition was allowed by order dated 30.9.1989. the appelliant company filed a writ petition challenging the order of eviction, which was later converted into revision petition under Section 50 of the Karnataka Rent Control Act. The said revision petition was dismissed rejecting claim for exemption from the applicability of Section 29(1) of the Karnataka Rent Control Act stating that no inquiry under Section 16 was pending nor any scheme referred under Section 16 was pending nor any scheme referred under Section 17 of SICA was under preparation or consideration. It was held that the stay order passed by the Delhi High Court in the writ petition did not entitled the appelliant company to invoke the protection of Section 22 of the SICA, as if appeal was pending. On these facts following two questions arose for consideration before this Court :-

- (1) What is the effect of the order passed by Delhi High Court dated February 21, 1991 staying the operation of the order dated January 7, 1991 passed by the Appellate Authority? Does it mean that after the passing of the said order by the High Court, the proceedings under the Act should be treated as pending and, if so, before which authority?
- (2) Are the proceedings instituted by landlord for eviction of a tenant who is a sick company from the premises let out to it, required to be suspended under Section 22(1) of the Act?"

We are concerned only with question number one. The proceedings before the Board under Sections 15 and 16 of the SICA had been terminated on 26.4.1990. The appeal filed by the appelliant company before the appellate authority had been dismissed on 7.1.1991. As a result of these orders no proceeding under the Act was pending either before the Board or before the appellate authority on 21.2.1991 when the Delhi High Court passed the interim order staying the operation of the order of appellate authority dated 7.1.1991. This Court held that the said stay order could not have the effect of reviving the proceedings, which had been disposed of by the appellate authority by its order dated 7.1.1991 observing that "While

**A** considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists it cannot be said that the appeal, which has been disposed of by the said order has not been disposed of and is still pending.” In that view this Court held that it cannot be said that any proceedings under the Act were pending before the Board or the appellate authority on the date of passing the order dated 14.8.1991 by the learned single Judge of the Karnataka High Court for winding up of the company or on 6.1.1991 when the Division Bench passed the order dismissing OSA No. 16 of 1991 filed by the company and, therefore, there was no impediment in the High Court dealing with the winding up petition filed by the respondents.

**F** In the case on hand the situation is entirely different. The Tribunal gets jurisdiction only on reference made by the Government. When the operation of the very order of reference was stayed the question of dispute pending before the Tribunal did not arise inasmuch as the reference order itself stood suspended. So long as stay order was operating it could not be said that the dispute was pending before the Tribunal. Admittedly, when **G** workmen were dismissed from service stay order was operating. Learned single Judge as well as the Division Bench of the High Court have proceeded on wrong footing relying upon the decision of this Court in *Shri Chamundi Mopeds Ltd.* (supra), that the order of reference was not wiped out by virtue of staying of the operation of order of reference. It is not the **H** question as to whether the order of reference is wiped out but the question

is what is the effect of the staying of the operation of order of reference itself. Once the operation of order of reference is stayed there is no question of dispute pending before the Tribunal so long as the said order remains in operation *because reference precedes dispute*. To put it differently, dispute could come up for adjudication by the Tribunal pursuant to the order of reference only. If in a pending proceeding operation of order is stayed pending disposal of the main matter such as an appeal or revision, obviously the impugned order does not get quashed or wiped out. It only remains suspended. But the position is different in this case, as already stated above. It was not a case where the dispute was pending and only further proceedings were stayed. When the order of reference itself was stayed the Tribunal did not have the jurisdiction to pass any further order. As such the question of either management making an application under the proviso to Section 33(2)(b) or the Tribunal passing an order of such application would not arise. In case any tribunal proceeds to pass an order in spite of stay of the operation of the order of reference by the High Court it may amount to contempt of the order of the High Court. In case of some grave misconduct the management cannot afford to sit idle or simply wait to take action, particularly, when stay of the operation of the order of reference is obtained at the instance of union on behalf of the workmen. The case of *Shri Chamundi Mopeds Ltd.* is quite distinguishable and it is on the facts of that case. Even in that case it is stated that the order of stay did not amount to revival of appeal or proceeding.

In *Ravi S. Naik v. Union of India and Others*<sup>4</sup>, dealing with the staying of the operation of the order of disqualification, passed by the Speaker of the Assembly in regard to two members of the House, this Court held that the order of disqualification made by the Speaker dated 13.12.1990 was not operative and consequently it could not be said that they were not members of Goa Assembly. The Court, looking to the terms of the interim order and its effect on the disqualification of the members on the relevant date, held, *it is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court*". Similarly, in the present case also looking to the terms of the interim order granted by the High Court staying the very operation of order of reference it could not be said that dispute was pending before the Tribunal on the relevant date, viz., the date on which the workmen were dismissed from service.

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4. [1994] Supp. 2 SCR 641.

A In the case of *Kanoria Chemicals* (supra), the notification of the Uttar Pradesh Electricity Board enhancing the electricity rates was under challenge. The High Court had granted interim order staying the operation of the said notification. Dealing with the contention that since the notification had been stayed the petitioners could not be compelled to pay the enhanced electricity rates after the dismissal of the writ petition, this Court, in view of what is stated in *Shree Chamundi Mopeds*, took the view that the stay of operation of the notification only meant that it would not be operative from the date of passing such order and it did not mean that the notification itself had been wiped out from the existence. Obviously after the dismissal of the writ petition the notification, which stood suspended during period of stay, became operative. The Court held that by virtue of the stay order even after dismissal of the writ petition the petitioners could not be relieved of their obligation to pay late payment surcharge/interest on the amount withheld by them. Again, *Style (Dress Land) v. Union Territory, Chandigarh and Another*<sup>5</sup>, was also a case where the High Court granted stay order in writ petitions filed challenging the increase in the rent of lease in commercial premises. Those writ petitions were ultimately dismissed directing the petitioners to pay the interest @ 18% per annum for the period during which the payment of rent at the new rates remained stayed by the High Court. Dealing with the contention that during the period when the stay was operative the petitioners could not be directed to pay interest, the Court held that mere passing of an order of stay could not be presumed to be a conferment of an additional right upon the litigating party. Referring to *Shree Chamundi Mopeds* the Court stated that the stay only meant that it would not be operative from the date of its passing till the writ petitions were dismissed and it did not mean the demand had been wiped out. These two decisions, in our view, do not help respondent-workmen, having regard to the terms of the interim order and in the context of the facts of those cases.

G The effect of grant of stay of operation of the order of industrial reference was that the Industrial Tribunal could not take up the reference for adjudication. Consequently, no action based on such reference could be taken by the Tribunal including grant or refusal of approval to the disciplinary action under Section 33(2) of the Act. The employer could not have, therefore, approached the Tribunal for seeking approval to its

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5. [1999] 7 SCC 89.

disciplinary action so long as the order of reference remained stayed by the order of the High Court. The industrial reference stood revived only when the writ petition against the industrial reference was finally disposed of by the High Court on 12.4.1999. The Industrial reference would be said to be pending only from 12.4.1999. The action of dismissal of the services of the workmen was taken on 31.3.1999. On that date, as a result of the order of the stay of the operation of reference by the High Court on 11.3.1999, no reference was pending for adjudication before the Tribunal. The provisions of Section 33 of the Act are attracted only when an industrial dispute is pending for adjudication and not merely when an order of reference is made by the Government. In the present case, proceedings were not pending before the Tribunal because of the stay of the order of reference itself. Both sub-section (1) and sub-section (2) of section 33 employ the language “during the pendency of any proceeding” which clearly convey that obligation on the part of the employer under the said Section of seeking “express permission” for the purpose of sub-section (1) or “approval” for the purpose of sub-section (2) arises only when there are proceedings pending on industrial dispute before the Tribunal or other specified statutory adjudicatory authorities under the Act.

In the present case as on date of dismissal of workmen from service the interim order staying the operation of the order of reference was operative. Hence the question of dispute being pending on that day did not arise. As already stated above, in order to make an application under proviso to Section 33(2) (b) of the Act, pendency of the proceeding was essential. In this view the appellant companies did not contravene the provisions of Section 33(2)(b) of the Act.

Under proviso to Section 33(2)(b) one of the essential conditions for making an application for approval of action is pendency of an industrial dispute. It is true that, as held in *Shree Chamundi Mopeds* case (supra), a distinction has to be drawn between the stay of an order and quashing of an order. In the instant case when the High Court stayed the operation of the order of reference itself either pendency of dispute or proceeding to adjudicate the dispute did not arise. In other words, the interim order of stay worked as a threshold bar for proceeding with the dispute. So long as interim order of stay continued, it could not be said that the dispute was pending. The High Court relied on the decision of this Court in *Shree Chamundi Mopeds* and emphasised that grant of interim order did not wipe

A out the existence of order of reference. But it did not focus its attention to the actual terms of the stay order and their effect in deciding the question as to pendency of proceedings before the Tribunal. What an interim order means or what is its effect and/or consequences of it depend upon its own terms. In case of some ambiguity or difficulty in understanding an interim order, which rarely happens, one has to understand the interim order

B looking to the prayer made for interim relief, facts of a given case and the terms of the interim order. In the case on hand we should first look at the terms of the interim order in order to judge whether a dispute was pending before the Tribunal or not. The interim order is plain in its terms, viz., the operation of the order of reference was itself stayed. As already noticed

C above, the effect of this interim order was that no proceedings could commence or were pending before the Tribunal at the material and relevant time. In this case whether the order of reference was wiped out or not by the interim order of stay was not relevant. It is not a case of staying an impugned order in appeal or revision. But the very order of reference is itself stayed. In the very nature of things interim order and final order are

D distinct and they serve different purposes. Interim order operates during the pendency of the proceedings and final order results in adjudication of a dispute finally. May be in some cases final order may be passed in terms of the interim order, but then interim order merges in final order and it gets elevated to the status of final order. One more factor to be kept in mind

E is that it is not that the workmen do not have remedy to challenge the order of dismissal. They can raise dispute challenging the said order of dismissal by initiating separate proceedings. Even if an application was to be made under proviso to Section 33(2)(b), the Tribunal could not have proceeded to pass any order because of the interim order passed by the High Court

F staying the operation of the order of reference. If the Tribunal were to proceed to pass any order there would have been a possibility of it committing contempt of the order passed by the High Court. This Court in *Baradakanta Mishra, Ex-commissioner of Endowments v. Bhimsen Dixit*<sup>6</sup>, dealing with the case that where the authority did not follow a binding precedent of the High Court and tried to justify not following it

G on some grounds, observed thus :-

“Contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a willful disregard or disobedience of the court’s order,

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H 6. [1973] 2 SCR 495.

it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. (Vide 17 Corpus Juris Secundum pages 5 and 6; Contempt by Edward N. Dangel (1939 Edn.) page 14. Oswald's Contempt of Court (1910 Edn.) pages 5 and 6). A

It is a commonplace that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and jeopardize the preservations of the law and order. The appellant's case is to be examined in the light of the foregoing principles and analogy." B C

That was a case where binding precedent of High Court was not followed, but in the present case the Tribunal, if was to proceed with an application under Section 33(2)(b) of the Act, it would have been direct disobedience of the interim order of stay passed by the High Court. D

A situation may arise where workman commits a grave misconduct and situation does not allow any delay in taking action against such workman and the interim order staying operation of order of reference is operative and if it was to prolong for a long time, it would lead to anomalous situation. The case of the appellant-companies, as can be seen from paragraph 3 of the Counter Statement filed by them in reply to the complaint made by the workmen under Section 33A of the Act, reads :- E

"It is submitted that the services of the First Party was terminated on 31.3.1999 for his involvement in the barbaric incident of setting fire to a bus carrying workmen resulting in the death of TWO women workers and critically injuring six others besides injuring SEVERAL OTHERS. The Second Party, in the normal course, would have held inquiries before taking any action but the fear psychosis generated in the minds of the workmen by the said act of First Party necessitated the Second Party apprehended that the situation may go out of control and the delinquents may be emboldened to indulge in further acts of violence. Therefore, the Second Party had no other option other than to dispense with the F G H

A services of the First Party in order to ensure that the services of  
the other employees were protected and that further acts of  
violence, if contemplated upon, could be curbed. Considering the  
gravity of the situation and in view of the apprehension expressed  
by the witnesses of their safety and security, the Second Party felt  
B that holding an enquiry was neither possible nor was it just and  
expedient. Hence, the services of the First Party was terminated  
for indulging in serious acts of violence and this was strictly in  
accordance with the standing order. The Second Party will lead  
evidence on the acts of misconduct for which the First party was  
dismissed from service and will justify its order of dismissal  
C before this Hon'ble Court in the event of this Hon'ble court  
holding the complaint as maintainable."

No doubt, the object of Section 33 of the Act is to protect the workman  
concerned during pendency of the proceedings in a dispute against  
D victimization by the employer for having raised industrial dispute or his  
continuing the pending proceedings. Further it is to ensure that the  
proceedings in connection with the industrial disputes already pending  
should be concluded in a peaceful atmosphere and to say that no employer  
should, during pendency of the proceedings, take action of any kind  
E mentioned in the said Section, giving rise to fresh disputes leading to  
straining the relations between the employer and the workman. But, then,  
the requirements of the said Section are to be satisfied in order to invoke  
the jurisdiction of the Tribunal under the said provision. For the purpose  
of the present case pendency of the proceedings before the Tribunal was  
F pre-requisite condition for making an application under the proviso to  
Section 33(2)(b) of the Act. Since the proceedings were not pending at the  
relevant time, i.e., on the date of dismissal of the workmen by virtue of  
the interim order granted by the High Court, the preliminary objection  
raised by the appellant Companies as to the very maintainability of  
complaint under Section 33A is valid and sustainable.

G  
The question set out above in the beginning of this judgment is  
answered in the negative.

H Thus, viewed from any angle in our considered opinion the impugned  
order cannot be sustained. The preliminary objection raised by the

appellant companies is upheld and consequently the complaint made by the respondent-workmen is dismissed as not maintainable. We must, however, make it clear that this order does not prejudice or preclude the respondent workmen from questioning the validity and correctness of the order of their dismissal from service by raising appropriate dispute in accordance with law. A

B

The appeals are accordingly allowed.

No costs.

R.P.

Appeals allowed.