

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

I.

Civil Writ Petition No.25831 of 2015

Date of decision: 10.12.2015

M/s Bellsonica Auto Component India Pvt. Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

II.

Civil Writ Petition No.25830 of 2015

M/s Bellsonica Auto Component India Pvt. Ltd.

... Petitioner

Versus

Additional Labour Commissioner and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashwani Talwar, Advocate,
for the petitioner in CWP No.25831 of 2015.

Mr.P.K.Mutneja, Advocate,
for the petitioner in CWP No.25830 of 2015.

Mrs.Abha Rathore, Advocate,
for the caveator in CWP No.25831 of 2015.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

This order will dispose of the aforesaid two writ petitions. The

facts are taken from CWP No.25831 of 2015 since the respondent-workman is on caveat represented by Mrs.Abha Rathore and the same can finally be disposed of on hearing both sides. CWP 25830 of 2015 impugns the same order and can thus be governed by a joint order.

2. The challenge in this petition is to the order passed by the Additional Labour Commissioner, NCR, Gurgaon on November 10, 2015 whereby the application moved on behalf of the petitioner management under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (the 'Act') has been rejected and consequently the application for approval of the order dismissing respondent No.5-workman from service passed vide impugned order dated February 16, 2015 have has been declined.

3. It is contended that the findings recorded in the impugned order are perverse and contrary to the factual position available on record wherein it is prima facie established that the charge-sheet for major misconduct was served without any delay and in prescribed time but in the disciplinary inquiry the workman did not join the proceedings despite having been afforded full opportunity to appear at the inquiry called through repeated registered notices advising the date/s of hearing in the inquiry proceedings. When respondent No.5 did not join, the management explains that the inquiry officer per force was left with no other option except to conduct *ex parte* inquiry against the workman and the charges imputed have been proven by *ex parte* evidence. The Additional Labour Commissioner, Gurgaon could not have had the jurisdiction to return a finding that the inquiry proceedings were vitiated as this was not within the powers conferred on the authority by Section 33 (2) (b) of the Act. It is argued by

management that although the application for approval of dismissal order was duly forwarded on the same day to respondent No.4 as well as to the Labour Commissioner at Chandigarh together with copy marked to the Deputy Labour Commissioner but still respondent No.4, the designated authority before whom the conciliation proceedings were pending has held that the application was not submitted “simultaneously” and for this reason also, the impugned order is bad in law. Management argues that spontaneity of action is not the requirement of the law.

4. It is further argued that the Conciliation Officer exercising ameliorative administrative jurisdiction is not conferred any judicial functions akin to courts of law. They adjudicate *no lis* as none is brought to them. They are only mediators between the disputing parties to try and resolve their differences through a settlement. If their work fails to settle the dispute, then they are statutorily bound to record reasons of failure and make a report to the appropriate Government containing reasons which led to the failure for the latter to consider making a reference of the dispute for adjudication by the Tribunal. In urging this, ruling of this Court in CWP No.17654 of 2015 rendered on August 25, 2015 [unreported] is pressed into service.

5. There is no dispute with the proposition of law since the proceedings under Section 33 (2) (b) of the Act are limited to *prima facie* consideration of whether the dismissal order deserves to be approved or not pending reference and adjudication of the dispute by the Labour Court. The authority could have placed its failure report for the Government to consider making reference. Since the question is one of jurisdiction in the authority,

there is no necessity for noticing facts in any detail as the consideration in judicial review of the order passed by the Additional Labour Commissioner, Gurgaon is limited to exercise of power in the parallel proceedings, one by the management, the other by the mediator testing *prima facie* the legality or otherwise of action taken by the management in dismissing the worker and whether such an order should take effect or not. The law does not require at the premature stage to go into the gravamen of the charges or the validity of the inquiry proceedings as that is within the exclusive domain of the Tribunal as no *lis* is being determined.

6. The law on the subject has been exhaustively explained by the Supreme Court in **Punjab National Bank Limited v. Their Workmen;** 1959 II LLJ 666 : AIR 1960 SC 160 where the severe limitations in exercise of authority have been recognized holding the view that the authority while dealing with an application under Section 33 of the Act, its consideration is only *prima facie* to grant express permission in writing before which the proceeding is pending or refuse it in the facts and circumstances of the case. The Supreme Court has guided that in a proceeding under Section 33 (2)(b), it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity. In passing an order, the Tribunal cannot impose conditions as it may either accept or refuse the application for approval. It has no third thing to do under the Act.

7. In assailing the impugned order, Mr.Ashwani Talwar, learned counsel appearing for the management has relied on a number of decisions, a compendium of which has been placed before this Court. These judgments

are : **Lord Krishna Textile Mills v. Workmen**; 1961 AIR SC 860, **Martin Burn v. R.N. Banerjee**; 1958 AIR SC 79, **Cholan Roadways Limited v. Thirugnanasambandam**; AIR 2005 SC 570, **Jaswant Sugar Mills Limited v. Lakshmi Chand and others**; AIR 1963 SC 677, **Punjab National Bank Limited v. its workmen**; 1960 (1) SCR 806, **N.M. Desai v. the Testeels Limited**; AIR 1980 SC 2124, **Jaipur Zila Sahakari Bhoomi Vikas v. Ram Gopal**, (2002) 2 SCC 244, **Calcutta State Transport v. Md. Noor Alam**; AIR 1973 SC 1404, **Tata Iron & Steel v. S.N. Modak**, 1965 (3) SCR 411, **United Bank of India v. Sidhartha Chakraborty**; (2007) 7 SCC 670, **Birla Cotton Spinning & Weaving Limited v. Labour Court, Delhi**; CWP No.266-D of 1965 decided on 15.2.1966, **Prem Chand v. the Presiding Officer**, CWP No.9281 of 2008 decided on 3.3.2009, **Steel Authority of India Limited v. Presiding Officer, Industrial Tribunal and another**; 2014 (1) LLN 776 (Orissa), **Jarnail Singh v. Presiding Officer, Labour Court, Patiala and another**; 2007 LLR 245, **Delhi Transport Corporation v. Nihal Singh**; 2010 LLR 909 and **Lalla Ram v. Management of DCM Chemical Works**; (1978) 3 SCC 1.

8. Various facets of the approval proceedings have been considered in these cases. Thumb nail sketch of the principles laid down therein are like this: The scope of Section 33 is very limited. The question of adequacy of evidence is irrelevant. The authority cannot sit in appeal and re-appreciate the evidence. The consideration is only *prima facie* on the facts presented. Jurisdiction under Section 33(2)(b) of the Act cannot be equated with that of Section 10 of the Act. The Conciliation Officer cannot be regarded as a Tribunal within the meaning of Article 136 of the Constitution

of India. The Conciliation Officer has not to decide whether the proposed dismissal was within the rights of the employer. If the employer has held a proper inquiry into the alleged misconduct of the employee and if it does not appear that the proposed dismissal of the employee amounts to victimization or unfair labour practice, the tribunal has to limit its inquiry only to the question as to whether a *prima facie* case has been made out or not. The order refusing or granting approval must be a speaking order. The proviso to Section 33 (2) (b) of the Act is mandatory and the conditions if fulfilled, interference may not be called for. A difference of a day is not of material bearing or consequence. The employer must pay or offer the salary for one month to the employee before passing an order of his discharge and must apply for approval of his action at the same time or within a reasonable time.

9. This, according to Mr.Talwar, militates against the theory of simultaneous compliance in one pack, at one go. Besides, if the delinquent employee appears and then disappears without justification, *ex parte* proceedings against him cannot be challenged. The authority or tribunal cannot sit in judgment as an appellate authority over the decision of the employer. This is the binding view of precedents and the principle of *stare decisis*. The sole question is whether the tests evolved stand satisfied in passing of the impugned order declining approval. Moreover, no word should fall from this Court while deciding this case which may prejudice either of the parties in case trial takes place with respect to the validity of the order of dismissal. Therefore, nothing said in this order will be taken as an expression on the merits of the case and the consideration is limited to

examination of the work of the Additional Labour Commissioner, Gurgaon.

10. It is stressed at the outset by Mrs.Abha Rathore that the key words in Section 33(2) are that the action of the management in dismissing a workman for any misconduct nor connected with the dispute has to be “in accordance with standing orders applicable to the workman concerned in such dispute”. The proviso to Section 33(2)(b) of the Act is mandatory in nature when it rules that a workman shall not be discharged or dismissed from service 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. There is no gainsaying that the dismissal order though passed cannot be given effect to unless the action is approved by the authority.

11. The argument, therefore, lies within the narrow compass of the reasons given in the impugned order which declines approval of the dismissal order and if they are justified and reasonable. Though a large number of arguments have been raised by Mr. Pawan Mutneja for most of the day, appearing in the connected matter, [in which Mrs.Abha Rathore is not on caveat] on the intricacies of the facts and the inquiry proceedings which led to the dismissal, and thus a few words on the charge-sheet may be briefly noticed but without forming any opinion on the merits of the dispute, lest prejudice is caused to either of the parties. In short, the substratum of the charge of misconduct committed by the workman lies in his act of adopting delaying tactics by resorting to the go-slow policy and inciting co-workers to follow suit. The charge is that production of goods suffered thereby causing loss to management. The workman is also accused of not

working as per schedule; not obeying the orders of the officers and the work performed was not in accordance with the rules of the management. The management is a ancillary factory supplying manufactured goods to M/s Maruti Suzuki India Limited falling in the same industrial belt.

12. The charge-sheet has been issued to the delinquent at his Rajasthan address in district Alwar. The workman was suspended from service on October 10, 2014. The charge-sheet is elaborate and consists of 12 paragraphs. Of many things, the workman is accused of trying to halt the working of the factory which the management says led to a critical situation. It is not disputed that the workman had raised a dispute and the matter was pending in conciliation proceedings before the authority that has passed the impugned order. Nothing more is to be said on the charge-sheet since the law will take its course.

13. It may also be mentioned that a large section of workers of the management brought a suit for permanent and mandatory injunction for declaring that the suspension of the plaintiffs [workers] by the defendants [management] was illegal, void and unwarranted and a prayer was made to restrain the defendants from conducting any domestic inquiry based on the suspension order. The suit was brought in the Court of Civil Judge, Junior Division, Gurgaon on December 20, 2014. The conciliation proceedings and the civil suit ran parallel during the relevant period. It is urged that when the suit was brought by 45 workers including the present respondent, they were aware of the charge-sheet dated October 17, 2014 having been issued against them, a copy of which had been even forwarded to the Labour Inspector on October 22, 2014, a fact disputed by the workers, including the

respondent, and admittedly on November 3, 2014. The workman had even applied to the Labour Inspector for supply of the said copy of the charge-sheet. The workman, the management aver, was aware of the pending inquiry proceedings initiated against him and other delinquent employees. The temporary injunction was refused by the trial Court and the interim stay was not granted and thus, the inquiry proceedings continued to make headway. The workman did not join the proceedings. The respondent herein submitted his reply to the charge-sheet on December 31, 2014 which was received by the management on January 5, 2015. The reply was not considered for the reason that the inquiry officer has already been appointed and was proceeding with the inquiry and the next date fixed was January 12, 2015 at 2:30 p.m.. The *ex parte* report was submitted by the inquiry officer on January 20, 2015. The charges were proven therein. The inquiry report runs into 47 pages and was submitted to the management. The workman was issued a show cause notice together with the inquiry report and a copy thereof was sent through registered post on January 30, 2015, the postal receipt of which is at Annexure P-26. The report was considered and the management dismissed the workman on February 16, 2015. However, since the joint demand notice was pending consideration before the Additional Labour Commissioner, Gurgaon, therefore, the approval application was mandatory before implementing the dismissal order and such a remedy was availed which has given rise to the present petition. The workman was paid his salary for one month in advance in lieu of the notice period. There were 38 workers who were dismissed on the same day and the appropriate sums of money of ₹ 33,998/- was duly credited on February 16, 2015 itself in the

savings account of respondent No.5 maintained with the State Bank of India.

14. Mr.Ashwani Talwar points out to para. 16 and 17 of the application filed under Order 39 Rule 1 & 2 of the CPC to prove the workman had prior knowledge of the inquiry and the charge-sheet. They are reproduced : -

“16. That the Defendant Company submitted before the Labour Inspector that the plaintiffs were suspended on the charges of causing sabotage at the work place and also for slow work in the industry vide letter dated 22.10.2014. And also stated that the defendant company had already issued charge-sheet against all of them and a copy of the said charge-sheet is also enclosed with the said letter.

17. That the plaintiff moved an application to the Labour Inspector for giving them the said charge sheet which were given by the defendant company and submitted to the Labour Inspector vide application dated 03.11.2014.”

15. From these pleadings, Mr.Talwar concludes that *prima facie* the workman knew of the material event of issuance of charge-sheet etc and they cannot feign ignorance of it. He would also refer to the letter written by the management to the Labour Inspector, Gurgaon dated October 22, 2014 in response to the office memo dated October 17, 2015. It is mentioned therein that the management had been called for hearing on October 17, 2014. They defended their action intimating that suspended employees were responsible for causing sabotage at the workplace and for affecting the production line. The manufacturing process was going on slow pace since April, 2014 but reached its worst peak in July, 2014. The Labour Inspector was informed that the charge-sheets have been issued to the employees

concerned. They enclosed copies of the charge-sheets in their letters. It was asserted that the charge-sheets have been sent to the individual delinquents at their addresses while no reply has been received till the material date.

16. Mr. Talwar dwells on the order passed in CWP No.17654 of 2015 rendered on August 25, 2015 in the case of the petitioner when it had approached this Court against the decision of the authority. The facts of that writ are these: the management had made a request to the Conciliation Officer to frame an issue for trial with a view to support the inquiry proceedings being fair and proper. The request was turned down by the Assistant Labour Commissioner, NCR, Gurgaon on August 19, 2015 by an elaborate order in writing. The Assistant Labour Commissioner declined the prayer for the reason that its jurisdiction cannot be converted into a full-fledged trial by permitting framing of issues and calling evidence. The only threshold issue required in the approval proceedings is whether the object and purpose of Section 33 (2)(b) of the Act has been abided by the management and to examine whether termination does not reek of victimization and has not been meted out as a measure of unfair labour practice. This Court, while dismissing the petition, observed that Section 33 (2)(b) of the Act is designed by Parliament to prevent breach of both the pernicious habits which management could be accused of, victimization and unfair labour practice. This Court referred to the decisions of the Supreme Court in *Punjab National Bank* case [supra] and **Lord Krishna Textiles Mills v. Its Workmen**, AIR 1961 SC 860. Other precedents were also noticed including the Division Bench decision of this Court in **Meters and Instruments Private Limited v. Devi Dayal Sharma**; 1983 LIC 104 where

this Court commended the view that in approval proceedings all that the forum has to see is whether the action of the management is not tinged with unfair labour practice or the vice of victimization. These are the only two aspects required to be examined in the proceedings. This Court found no merit in the petition for framing a preliminary issue and dismissed the same. The Court observed that nothing said in the order would influence the Additional Labour Commissioner, NCR, Gurgaon when it takes its final call. The issues involved in the petition were found premature and the *lis* is open to trial on merits. Presently, the final decision has been taken which has brought these two petitions for adjudication in the limited supervisory jurisdiction exercised by this Court in proceedings under Article 226 and 227 of the Constitution of India while reviewing the order under Section 33 (2) (b) of the Act.

17. The time is now ripe to examine the work of the authority which has passed the impugned order to see if it is worthy for affirmance or deserves to be set aside. The authority under Section 33 (2) performs quasi-judicial functions and therefore the necessity of passing speaking orders, see *Testeels* case (supra). The order is indeed an elaborate one which qualifies as a speaking order, perhaps more than one should have seen in one or two passages. All the same, the authority is not wrong when it places onus on the management to justify action taken since the law is that he who asserts a positive fact, must prove it. There was a serious dispute raised as to service of the charge-sheet on the workman in point of time. The management argued that the charge-sheet was issued on October 21, 2014 while on the other hand the respondent argued that the charge-sheet was given to him on

December 24, 2014 after the orders were passed by the civil court. The authority noticed that a general demand notice had been submitted by the workmen on the management prior to their suspension. The management admits that it received the same. It has also come as a fact on file that the workers formed a union which was registered on October 10, 2014. This was remarkably formed at a crucial stage of the strife and unrest. The union had submitted a complaint dated October 20, 2014 before the Assistant Labour Commissioner, Circle-VI, Gurgaon alleging unfair labour practice in suspension and inquiries leading to dismissal. The authority found *prima facie* the action of the management amounts to victimization and had been actuated by malice to curtail union activities of the workman.

18. Next, the question whether the action was in conformity with the Model Standing Orders was taken up for discussion by the authority. The Model Standing Orders, as required, enable the management to place a workman under suspension by an order in writing. Furthermore, the charge-sheet must be served within one week of the date of the order of suspension and the workman must be given opportunity of presenting his defence. The management claimed that the charge-sheet was served on the workman on October 17, 2014 but acceptance of the same was refused and hence was sent by post on October 21, 2014. The workman brought on record the order dated December 24, 2014 which recorded therein that the charge-sheet was handed over to the workman. That was the order passed by the Civil Court in the suit. It was the workman's case that the charge-sheet was replied to by the respondent after receiving the same on December 24, 2014 in the civil court proceedings pending at Gurgaon. The authority has recorded that the

management had issued 41 show cause notices in bulk at the address of the head office of the union. Only one envelope was opened and it contained only the show cause notice and was not accompanied by cheque representing one months' wages or the inquiry report. The balance envelopes had been kept sealed on record. The authority noticed that the dismissal took place on February 16, 2015 but the application was moved before the authority on February 24, 2015 which is at a later stage and the authority thought that this was contrary to the provisions of Section 33(2)(b) of the Act. The authority has found that the management failed to prove that it complied with the Model Standing Orders in its action of suspending the workman and carrying out an inquiry against him. The authority noticed the law in **Air India Limited v. D.G. Patil**, 2004 (4) Bom CR 826 on the question of knowledge of existence of a charge-sheet and pendency of inquiry proceedings against the workman. Whether there was due service of charge-sheet or knowledge of inquiry proceedings, is also a matter of trial and evidence and nothing can be said at this stage on those things. The authority has referred to the order dated January 30, 2015 passed in Civil Suit No.274 of December 20, 2014 disposing of the four applications moved by the workers under Order 39 Rules 1 & 2 of the CPC read with Section 151 of the CPC for restraining the defendants not to conduct any departmental enquiry and not to proceed with the enquiry. The civil court directed the management to allow one Mr.Subhash Chander to represent all the plaintiffs in the course of domestic inquiries. To that extent, the applications for temporary injunction were partly allowed making way for submission of representation/s to the management. The workman says that

the mandate of this order was neither carried out nor was it given effect to by the management. The authority noticed from the Model Standing Orders that the workmen have a right to get assistance by representation in the inquiry proceedings and which, according to the authority, was a valuable right denied to the workman by the management. However, to the contrary the management argued that assistance of a representative was not asked for sought by the respondents and thus no prejudice was caused to the workman. The authority held that even no application for assistance was made. The management also did not offer the respondent the right of representation in spite of the workers moving the Civil Court. The authority relied on the Constitution Bench verdict of the Supreme Court in **P.H.Kalyani v. M/s Air France, Calcutta**; 1964 (2) SCR 104 while referring to its earlier dicta in *Strawboard* case observed thus : -

“The main point which was raised in (his appeal is now concluded by the decision of this court in the Strawboard Manufacturing Co. Limited Sharanpur Vs Govind. This Court has held in that case that the proviso to Section 33(2) (b) contemplates the three things mentioned therein, namely (i) dismissal or discharge (ii) payment of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction so that the employer when he takes the action under Section 33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time.”

18. The lower authority after noticing the above ruling reasoned in the impugned order as follows : -

“A perusal of the record available on the case file shows that the applicant management submitted the application dated 16.2.2015 before the Deputy Labour Commissioner,

Circle-2, Gurgaon on 20.2.2015 this application was received in this office on 24.2.15 from the Deputy Labour Commissioner, Circle-2, Gurgaon. The documents received from the Deputy Labour Commissioner, Circle-2, Gurgaon, contains a letter addressed to Labour Commissioner, Haryana, Chandigarh which has been stamped receipt of 16.2.2015. The documents received from the Deputy Labour Commissioner, Circle-2, Gurgaon also contains an application for approval under Section 33(2)(b) of Industrial Disputes Act, 1947 addressed to the Additional Labour Commissioner, NCR, Gurgaon. The application addressed to Deputy Labour Commissioner, Circle-2, Gurgaon mentions that following documents related to the application have been attached.

1. Copy of Application for Approval under Section 33(2)(b) of the Industrial Disputes Act, 1947.
2. Copy sent by Registered Post to Individuals for Service Termination Order.
3. Copy of amount transferred into Bank Account (Electronic Clearing System).
4. List of Individuals with Bank Account No.
5. Domestic Enquiry Report.

The first four documents were found attached, but strangely the enquiry report was not enclosed with the application.

The applicant chooses to file application before Deputy Labour Commissioner, Circle-2, Gurgaon instead of in this authority, although the main application was addressed in the name of this authority. It was not disclosed by the applicant that when the application was marked in the name of this authority, then in what circumstances, it was stamped in the office of the Labour Commissioner, Haryana at Chandigarh, although this office is situated in the same city where the factory of the applicant is existed i.e. Gurgaon, while the office of Labour Commissioner, Haryana is situated at Chandigarh i.e. about 250 kilometres away from Gurgaon. The A.R. Of the management also argued that the application was also sent to this authority by post, but was not disclosed why the application was sent by

post in this authority while it was submitted by hand in the office of Deputy Labour Commissioner, Circle-2, Gurgaon. No application by post has been received in this authority from the applicant. A perusal of the office record shows that the management also submitted the application before this authority on 18.2.15 by hand and after entry in the office register, the management received back the said application. Further it is not the provision of the Act that the application for approval can be filed before any authority of the department and it is specifically mentioned that the application is to be filed before the authority where the general dispute is pending. Further it could not be said that the applicant had no knowledge where the general dispute was pending, as the application for approval was addressed in the name of this authority. The applicant did not submit application directly to this authority instead the application was sent to this authority by Deputy Labour Commissioner, Circle-2, Gurgaon. Such an application cannot be termed as simultaneous and part of same transaction.

In view of the above discussion, I hold that the provisions of the Act were not complied with by the applicant and the application for approval was not submitted on the same day before the authority where the general dispute was pending.”

19. From the above, Mr.Talwar and Mr.Mutneja argue that the authority has taken far too technical a view of compliances prescribed in Section 33(2)(b) of the Act and the word, “immediately” in *Kalyani* case should not be read literally and it is enough that an approval application *is* moved since the delay would go against the management and justice demand that this strict view should be avoided by all means. Still further, the word, “immediately” is used with respect to offer of wages for one month in lieu of notice and the word, “also” in *Kalyani* case with respect to making an application for approval is succeeded by the words “at the same

time” which deserve to be read in favour of the management. “At the same time” means contemporaneous and not in a single action in one file. Late submission would not be fatal to the application for approval. This submission looks attractive at first glance but deserves to be noticed only to be rejected. This Court cannot add anything to the law in *Kalyani* [supra] or interpret the language and the words, “simultaneously”, “immediately”, “also” and “at the same time” found in *Kalyani* point the compass to the conclusion that the delay will defeat the provisions of the law and this is what the Parliament ordained. The judgment of the Supreme Court is not open to be interpreted by this Court and it is the bounden duty to give effect to the law by acting in aid of the Supreme Court. On the third facet of Section 33 (2)(b), the authority observed that the payment of one months' notice pay along with the dismissal order by way of cheque was not enclosed in the dismissal order but the amount equal to the one months' wages along with other dues was deposited in the bank account of the respondent on the same day and, therefore, there was not only been substantial but due compliance of the third provision. In the main, the approval has been declined on a finding of victimization and on breach of the terms of Model Standing Orders inasmuch as these provisions were not strictly adhered to.

20. The procedural safeguards in Section 33(2)(b) are mandatory which cannot be breached as that would violate the rights of workers as designed by Parliament in Section 33(2)(b) to be a package of checks and balances against the arbitrary actions of the management in dismissing its employees, if they are in colourable exercise of employer's power to

dismiss. However, the observations of the authority with respect to the propriety of the domestic inquiry and whether it was fair and proper, have to be read only on the touchstone of the Model Standing Orders and will have no effect on the trial, if and when it takes place, on the point and the proper forum will, needless to say, act independently. Those observations are held to be excessive and were not strictly necessary to the determination in approval proceedings.

21. I would, therefore, for the reasons recorded above, reject both the petitions and uphold the order to the extent that *prima facie* the authority has taken the view to grant an interim stay of the dismissal order by declining the application for approval. In its essence it is a possible and plausible view which could have been taken by a reasonable person in the facts and circumstances of the case.

22. However, this would not preclude the management from holding a regular departmental inquiry in terms of the Model Standing Orders from the stage of consideration of the reply of the workmen to the charge-sheet, as that is the stage where the error mostly lies. This direction would be in consonance with law in **Managing Director, ECIL Hyderabad v. B. Karunakar Etc.**; (1993) 4 SCC 727. To the extent that the order closes the chapter altogether after declining the approval sought may not have been a fair thing to do since law expects that the Additional Labour Commissioner, NCR, Gurgaon would take earnest steps to either try and settle the dispute or in the event it fails to resolve it, then to submit in writing his failure report to the appropriate Government for its consideration in making a reference to the Labour Court exercising territorial jurisdiction

to adjudicate the industrial dispute, in case the same has not already been done.

23. Before parting with this order, this Court observes that the interim order dated December 10, 2015 will not be given effect to meanwhile and the matters set out in the impugned order will be subject to trial on evidence and till such time all matters including the two envelopes opened by this Court during the hearing of the proceedings on December 10, 2015, will remain open to examination alone before the proper industrial forum, as and when the reference of the dispute is made and the trial proceeds to answer the reference and the labour court presents its award. However, nothing said in this order will influence the mind of the labour court, in case it is seized of the dispute in the future. In view of the conclusion reached, it is not found necessary to discuss in any detail the case law cited by Mr. Talwar noticed in paragraph 7 above with respect to the nature and character of approval proceedings, which all are valuable precedents in the understanding of the scope of Section 33 (2) (b) of the Act. The scope presently is limited to the examination of the question whether approval should or should not have been granted by the authority, *prima facie*, of the action taken.

(RAJIV NARAIN RAINA)
JUDGE

December 10, 2015

Paritosh Kumar