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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th July, 2015

+ W.P.(C) 3461/2012

I.A.L. AIRPORT SERVICES LTD.

..... Petitioner

Through: Mr. Lalit Bhasin and Ms. Bhavna
Dhami, Advocates

versus

SH. ANIL KUMAR RATHORE AND ORS. Respondent

Through: Mr. Rakesh K. Mudgal and Mr.
Dinesh Mudgal, Advocates

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. The short question involved in the present Civil Writ Petition filed by the petitioner under Article 226 and 227 of the Constitution of India is whether the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Karkardooma Courts, Delhi was justified in not framing the issues on the preliminary objections raised by the petitioner in ID No.34/ 2012.

2. The factual matrix of the case as disclosed in the writ petition are that Indian Airlines Ltd.-Airport Service Ltd. (hereinafter referred to as IAL-ASL) was incorporated under the Companies Act. It was wholly own subsidiary of Indian Airlines Ltd. Respondent Nos. 1 to 17 were recruited by IAL-ASL on fixed term contract basis. These sub-assistants were deputed to Airline Allied Services Ltd. which was another wholly own subsidiary of Indian Airlines Ltd. A meeting was held between the Sub-Assistants and the

management of erstwhile Indian Airlines Ltd. when certain local issues (not involving policy of IAL-ASL) were discussed and resolved. Issues involving policy, such as increase in remuneration, grant of additional benefits etc. were forwarded to the office of Chief Operating Officer, IAL-ASL for consideration. Sub-Assistants threatened the management to go on march near the departure area at IGI Airport. An office order was issued that no leave application was to be entertained from the security staff. However, some Sub-Assistants including the respondent herein were spotted wearing black badges on the frontline areas on direct passenger interaction. Accordingly, the management issued instructions and also issued letter to Sub-Assistants to refrain from wearing black badges. They were also advised that their demands are pending consideration. However, Sub-Assistants walked out of their work places instigating others to do the same. Accordingly, the services of 22 Sub-Assistants including respondent No.1 to 10 and 17 were terminated. The Conciliation Officer directed them to call off the strike. However, despite the said direction, the Sub-Assistants continued with their illegal strike in violation of Section 22 of Industrial Disputes Act, 1947. An order was issued by the Management to twenty (20) Sub-Assistants including respondent Nos. 11 to 16 to the effect that they have voluntarily abandoned their respective duty and accordingly their name stands deleted with the immediate effect. Conciliation proceedings ended in failure. Board of IAL-ASL decided to wind up the IAL-ASL due to administrative and financial reasons. A writ petition was filed by respondent Nos.1 to 17 challenging their termination and deletion of their names. However, the same was withdrawn with liberty to approach the

Tribunal under Industrial Disputes Act. Thereafter, respondent Nos. 1 to 17 raised a direct industrial dispute under Section 2A(2) of ID Act. Notice was issued by CGIT-cum-Labour Court-I to the petitioner. The petitioner filed its written statement raising various preliminary objections, inter alia, on the ground that the claim filed by the respondents is liable to be dismissed as the dispute is not maintainable as the workmen had approached the Tribunal without approaching the Conciliation Officer which is a pre-condition of Section 2A(2) of the Industrial Disputes Act, 1947. The employees had raised an industrial dispute vide their letter dated 15th May, 2009 before the RLC(C), New Delhi regarding their demands about additional benefits and remuneration. Conciliation proceedings were held but as the matter could not be resolved, the Chief Labour Commissioner (C) held conciliation proceedings on various dates. During the conciliation proceedings, the Employees Union also demanded that all the workmen whose services were terminated should be taken back. The said conciliation failed and the failure report was recorded on 19th October, 2009 and sent to Secretary, Ministry of Labour, Govt. of India, New Delhi. The conciliation had started before the amendments in the ID Act which came into effect on 15th September, 2010, thus, the said conciliation was not under Section 2A of the ID Act.

3. It was also alleged that before the appropriate Government could make a reference of the dispute under Section 10 of ID Act to the Industrial Tribunal, the workmen filed a Writ Petition which was withdrawn seeking liberty to move the Industrial Tribunal under the provisions of ID Act. Instead of raising the dispute under the provisions of ID Act, the workmen directly approached the Tribunal

which is not permissible under law as the appropriate Government has been totally sidelined. The dispute raised by the respondent is neither an industrial dispute nor any individual dispute. The notice issued by the Tribunal to the Management is without and in excess of jurisdiction. The appropriate course of action for the workmen was to approach the appropriate government for making a reference arising out of Failure Report submitted by the Chief Labour Commissioner on 19th October, 2009. Moreover, from the very beginning, the dispute has been collective dispute and, as such, is outside the purview of Section 2A of the ID Act. Besides that, various other objections were taken and the claim was contested on merits.

4. On 1st May, 2012, following impugned order was passed by the Presiding Officer, CGIT:-

"Cost paid. W.S. along with documents filed. Copy given to Shri Mudgal. I have perused pleadings of the parties and following issues are settled:-

- (i) Whether the claimants were engaged as Sub-Assistants by the management?*
- (ii) Whether claimants rendered continuous service for more than 240 days in preceding 12 months of the date when their services were terminated?*
- (iii) Whether the termination of the services of the claimants amounts to retrenchment?*
- (iv) Whether the management failed to comply with the provisions of Section 25(F), 25(G) and 25(H) of the Industrial Dispute Act, 1947?*
- (v) Whether the activities of the management have been closed since 30.09.2010? If yes, its effects.*
- (vi) To what relief the claimants are entitled?*

Various preliminary objections were taken in the written statement, on which Shri Ravi Gopal was heard. No issue is made out on those preliminary objections. Hence no other issue is settled. Adjourned for evidence of the claimants for 01.06.2012."

5. Feeling aggrieved, the present writ petition has been filed on the ground that the Labour Court refused to frame any issues on the preliminary objections raised by the petitioner and erroneously and perversely assumed jurisdiction to entertain the dispute.

6. A perusal of the impugned order goes to show that although it was noted that various preliminary objections were taken in the written statement but without assigning any reasons, it was observed that no issue is made out on those preliminary objections. This finding of the Court cannot be sustained in view of the fact that the preliminary objections raised by the petitioner goes to the maintainability of the petition. There are catena of decisions to the effect that reasons are heartbeat of every conclusion apart from being an essential feature of the principles of natural justice, that ensures transparency and fairness in the decision making process.

7. In ***Maya Devi (Dead) through L.Rs. and Ors. v. Raj Kumari Batra (Dead) through L.Rs. and Ors.***, (2010) 9 SCC 486, Supreme Court held that disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed:

“28....There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of mind.

and disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own...

8. Similarly, in ***State of Rajasthan v. Sohan Lal and Ors.***, (2004) 5 SCC 573, the Court emphasised the need for reasons thus:

"...The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind..."

9. In ***Hindustan Times Ltd. v. Union of India***, (1998) 2 SCC 242, Apex Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed:

"...In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal..."

10. In ***Director, Horticulture Punjab and Ors. v. Jagjivan Parshad***, (2008) 5 SCC 539, it was stated that the spelling out of reasons in an order is a requirement of natural justice:

"...Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of

judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance..."

11. In ***Hindustan Times Ltd. v. Union of India***, (1998) 2 SCC 242 the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity.

12. In ***Union of India v. Jai Prakash Singh***, (2007) 10 SCC 712, reasons were held to be live links between the mind of the decision-maker and the controversy in question as also the decision or conclusion arrived at.

13. In view of the preliminary objections taken by the petitioner, following issues were also required to be framed:-

- (a) Whether the Tribunal can entertain the present dispute when the workmen have directly approached the Tribunal without approaching the Conciliation Officer as required under Section 2A(2) of the Industrial Disputes Act?
- (b) Whether the dispute is outside the purview of Section 2A(2) of the Industrial Disputes Act as the same has been raised collectively?
- (c) Whether the dispute is maintainable under Section 2A(2) of the Industrial Disputes Act?
- (d) Whether the conciliation proceedings started pursuant to an industrial dispute raised by IAL-ASL Employees Union have

any relevance for the present dispute?

(e) Whether the present dispute is an industrial dispute or an individual dispute?

14. During the course of arguments, it is submitted by the counsel for the respondent that the evidence of both the parties has already been completed and now the matter is listed for final arguments. Learned counsel for both the parties conceded that the issues arising out of preliminary objections taken by the petitioner do not require any evidence and are in fact the legal issues which can be decided on the pleadings of the parties.

15. Under the circumstances, the writ petition is allowed. The issues, as referred above, be considered in additions to the issues already settled by the Presiding Officer.

16. It is clarified that no evidence is required to be adduced in regard to these issues and it will be open to the parties to address arguments on these legal issues.

17. With these observations the petition stands disposed of.

18. It is stated that the matter is listed before the Tribunal today. Parties are directed to appear before the CGIT on 16th July, 2015.

Copy of the order be sent to the CGIT for information and compliance.

(SUNITA GUPTA)
JUDGE

JULY 08, 2015

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