

IN THE HIGH COURT OF BOMBAY AT GOA

WP No.6 OF 2021

Akhil Bhartiya Mazdoor Sabha,
through its President,
Mr. Chandbibi Zaidi,
A duly registered Trade Union,
Having its office situated at
Kennedy House, 4th floor, H.G.,
Road, Nana Chowk, Mumbai -7.

..... Petitioner

V E R S U S

1) Venus Ethoxyethers Pvt. Ltd.
Having its registered office and
Plant situated at Plot No.109-111,
Bicholim Indl. Estate, Bicholim,
Goa – 403 529.

2) Goa Trade And Commercial
Workers' Union, Velho's Building,
2nd floor, Opp. Municipal Garden,
Panaji, Goa – 403 001.

..... Respondents

Mr. Gautam Yadav, Advocate for the Petitioner.

Mr. Prasanna C. Chawdikar, Advocate for the Respondent no.1.

None for the Respondent no.2.

CORAM: DAMA SESHADRI NAIDU, J.**DATE: 23rd FEBRUARY 2021.****Pronounced on: 8th March, 2021.****ORDER:**

In Regular Civil Suit No.60 of 2021 before the Civil Judge, Junior Division, Bicholim, the first respondent employer, as the employer, sought these reliefs:

- a) For an order of injunction restraining the defendants, their colleagues, and representatives, agents, permanently, from *blocking the entry and exit* from and through the plaintiff's establishment/properties of the plaintiff company, as indicated in the annexed Plan at Annexure-2 (colly) to the suit;
- b) Pass an order, granting permanent injunction to restrain the Defendants, either by themselves or through ... from instigating, *holding Dharna/ demonstrations* at the Plaintiff's establishment or at any place within a radius of 500 meters from the establishment gates/compound wall of the premises of the Plaintiff as indicate in the annexed Plan at ANNEXURE -2 (Colly)to this suit;
- c) Pass an order, granting permanent injunction to restrain the Defendants, either by themselves or through ... from instigating, preventing or *obstructing* the Plaintiff's employees, the contractors labourers, its agents, customers, clients etc., in *free ingress to or egress from* the Plaintiff's aforesaid of the establishment/properties of the Plaintiff company as indicated in the annexed Plan at ANNEXURE-2 (Colly) to this suit and;
- d) Pass an order, granting permanent injunction to restrain the Defendants, either by themselves or ... from instigating, preventing or obstructing the Plaintiff's agents, suppliers, customers, clients etc. *from supply of the raw material and from removal of the finished goods* from the Plaintiffs aforesaid establishment/properties of the Plaintiff company as indicated in the annexed Plan at ANNEXURE-2 (Colly)to this suit and;
- e) Pending the hearing and final disposal of the present suit, for *an ad-interim order of injunction* of this Hon'ble Court restraining the Defendants, ... *from instigating, holding Dharna/ demonstrations* at the Plaintiff's establishment or at any place within a radius of 500 meters from the compound wall of the establishment/properties of the Plaintiff company as indicated in the annexed Plan at ANNEXURE-2 (Colly) to this suit;
- f) Pending the hearing and final disposal of the present suit, for *an ad-interim order of injunction* of this Hon'ble Court to restrain the Defendants ... from instigating, preventing or *obstructing the Plaintiffs employees, the contractors labourers, its agents, customers, clients etc, in free ingress to or egress* from the Plaintiffs aforesaid establishment of the establishment/properties of the Plaintiff company as indicated in the annexed Plan at ANNEXURE-2 (Colly) to this suit;
- g) Injunction to restrain the Defendants, either by themselves or

through their agents, supporters, associates, patrons, family members and accomplices from instigating, preventing or obstructing the Plaintiff's agents, suppliers, customers, clients etc. from supply of the raw material and from removal of the finished goods from the Plaintiffs aforesaid establishment of the establishment/properties of the Plaintiff company as indicated in the annexed Plan at ANNEXURE-2 (Colly) to this suit and;

h) For ex parte ad-interim relief in terms of prayers (a), (b), (c), (d), (e), (f) and (g) above.

i) Pass such other further relief that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. In that suit, the first respondent also sought certain interim reliefs which read thus:

12. In view of the above and circumstances, it is prayed this Honorable Court be pleased to pass:

a) An order of temporary injunction restraining the defendants, ... *from holding dharna or blocking the entry and exit* through the factory gates of the establishment/properties of the plaintiff company as indicated in the annexed Plan at Annexure-2 (Colly) to this suit;

b) Pass an order, granting temporary injunction to restrain the Defendants ... *from instigating, holding Dharna/demonstrations* at the Plaintiff's factory or at any place within a radius of 500 meters from the compound wall of the plaintiff as indicated in the annexed Plan at Annexure -2 (Colly) of this suit;

c) Pass an order, granting temporary injunction restrain the Defendants ... from instigating, preventing or *obstructing the* Plaintiffs employees, the contractors labourers, its agents, customers, clients etc, *in free ingress to or egress from* the Plaintiff's aforesaid of the establishment/properties of the Plaintiff company as indicated in the annexed Plan at Annexure -2 (Colly) of this suit and;

d) Injunction to restrain the defendants ... *obstructing the* Plaintiffs agents, suppliers, customers, clients etc., *from supply of the raw material and from removal of the finished goods* from the Plaintiffs aforesaid factory of the the Plaintiff as indicated in the annexed Plan at Annexure -2 (Colly) of this suit and.;

e) For ex-parte ad interim relief in terms of prayers (a), (b), (c)

and (d) above.

f) Such other and further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the the present case.

3. When the trial Court took up the first respondent's interlocutory application for temporary injunction, the petitioner-trade union, as the first defendant, raised a preliminary objection. In its application, the petitioner has contended that the civil court has no jurisdiction to try the suit, as the jurisdiction is vested with the authority under the Industrial Disputes Act, 1947. It has also contended that the issue of factory closure has already been *sub judice* before the learned Commission of Labour at Panaji-Goa. Finally, it has argued that the first respondent-company has an efficacious alternative remedy.

4. Eventually, the trial Court rejected the petitioner's preliminary objection, through its order below Exhibit D-34, dated 7/12/2020. Aggrieved, the petitioner has filed this Writ Petition under Article 227 of the Constitution of India. Despite service of notice, the second respondent, which is said to be another trade union, has not entered its appearance. So, I have heard Shri Gautam Yadav, the learned counsel for the petitioner, and Shri Prasanna Chawdikar, the learned counsel for the first respondent.

5. To support his contentions, he has relied on: (i) *Premier Automobile Ltd. Bombay, Automatic Electric P. Ltd. v. Engineering Mazdoor Sabha, Kamlekar Shantaram Wadke*¹, (ii) *Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad*², and (iii) *Bharat Petroleum Copr. Ltd. v. Petroleum Employees Union*³.

Arguments:

Petitioner:

6. Shri Yadav, the learned counsel for the petitioner, has taken me through Section 2(ra) of the Industrial Disputes Act and contended that all unfair labour practices are amenable to the corrective jurisdiction as

1] AIR 1975 SC 2238

2] AIR 2002 SC 997

3] (2001) 2 Bom CR 464

provided under the Industrial Disputes Act 1947. In that context, he also points out that Part II of Schedule V, especially Clauses 5 to 8, comprehensively covers the alleged instances of violation the petitioner trade union now has been accused of in the suit. According to Shri Yadav, even when conciliation proceedings are pending, any aggrieved party, either an employee or the employer, can approach the Industrial Tribunal and seek appropriate reliefs, even of interim nature, pending the adjudication of the industrial dispute. So, he strenuously contends that the Civil Court lacked the jurisdiction, and it ought to have rejected the plaint or, at least, the interim relief the first respondent has sought.

7. Shri Yadav has also submitted that the trial Court's order is devoid of any reason, nor has it referred to the precedents the petitioner has cited before it. Therefore, he has urged this Court to allow this Writ Petition.

First Respondent:

8. On the other hand, Shri Chawdikar, the learned counsel for the first respondent, has submitted that the Industrial Tribunal is incapable of granting any interim relief, especially those the first respondent sought before the trial Court. According to him, a Division Bench of this Court has already considered the issue in depth; it has examined even those decisions now the petitioner relied on and ruled in *MRF, Ltd. Goa and Goa MRF Employees Union, Goa*⁴. The Division Bench, he stresses, has held that the civil court's jurisdiction does not stand barred when the Industrial Tribunal cannot provide the interim relief. Therefore, he has urged this Court to dismiss the Writ Petition.

Reply:

9. In reply, Shri Yadav, the petitioner's counsel, has submitted that the industry has been closed. Besides, the interim relief the respondent has sought stands squarely covered by Part-II of the Schedule V of the Industrial Disputes Act. That is, the Industrial Tribunal can grant the relief.

Discussion:

10. In the Statement of Objects and Reasons of Amending Act 35 of

4] 2003 (4) LLN 1182

1965, the scope of ID Act has been adverted to. In construing the scope of industrial dispute, the legislature acknowledges, Courts have taken the view that a dispute between an employer and an individual workman cannot *per se* be an industrial dispute. But it may become one if it is taken up by a union or a number of workmen making a common cause with the aggrieved individual workman. In view of this, cases of individual dismissals and discharges cannot be taken up for conciliation or arbitration or referred to adjudication under the Industrial Disputes Act, unless they are sponsored by a union or a number of workmen. So the Amending Act 35 of 1965 made the machinery under the Act available in such cases, too.

11.As to the object of the Act, the Supreme Court in *Workmen v. Hindustan Lever Ltd.*⁵, has held that the ID Act is a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes.

12.Definitionally speaking, section 2 (k) defines an “industrial dispute” to mean any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. That is, (a) it is a dispute within an industrial establishment, and (b) it must concern the employment-related issues, including the conditions of labour.

13.As we have already noted, what the respondent establishment sought from the Civil Court are these reliefs: (a) restrain the defendants and others “from *blocking the entry and exit* from and through the plaintiff's establishment”; (b) restrain the defendants and others from instigating, *holding Dharna/ demonstrations* at the plaintiff's establishment; (c) restrain the defendants and others from instigating, preventing or *obstructing* the Plaintiff's employees and others.

14.The question is whether the above apprehended disruptive activities should be regarded as instances of industrial dispute. Let us see the precedential position on this issue.

5] (1984) 1 SCC 728

15. In an industrial establishment, there are two unions and a few workmen who are unattached; they belong to neither union. One of the unions signed a memorandum of settlement. That memorandum sought to bind all workmen—members and non-members. The respondents 1 and 2, not being members of the union that signed the memorandum, filed a suit for a declaration that the memorandum would not bind them. The appellant company and the other respondent union, as the defendants, challenged the civil court's jurisdiction to entertain the suit in relation to what they claim to be an industrial dispute. The trial Court and the High Court rejected the jurisdictional objection. So the matter reached the Supreme Court.

16. The Supreme Court, in *The Premier Automobiles Ltd.*, has exhaustively analyzed the issue with reference to numerous precedents. It has, then, culled out the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

Then, *The Premier Automobiles Ltd.*, wonders whether there is any dispute “which will be an industrial dispute within the meaning of Section 2 (k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act”. Civil Courts, therefore,

will have hardly an occasion to deal with the type of cases falling under principle 2 stated above. And cases of Industrial disputes by and large, almost invariably, are bound to be covered by the above principle 3. On the facts, *The Premier Aotumobiles Ltd.*, has held that “it is all the more clear that the civil court has no jurisdiction to try it”.

17. In *Chandrakant Tukaram Nikam*, the workmen of Ahmedabad Municipal Corporation challenged the orders of their dismissal from service, by filing a Civil suit. They wanted the civil court to declare the orders of termination as void, having been passed by an authority with no competence. The Supreme Court has held that “having regard to the relief sought in the suits filed in the Civil Court, jurisdiction of the Civil Court is impliedly barred and the appropriate forum for resolution of such dispute is the forum constituted under the Industrial Disputes Act”.

18. In that process, the Supreme Court has held that the ID Act provides speedy, inexpensive, and effective forum for resolution of disputes arising between workmen and the employers. The underlying idea is to ensure that the workmen do not get caught in the labyrinth of Civil Courts, which the workmen can ill-afford. The procedure followed by Civil Courts are too lengthy and, consequently, is not an efficacious forum for resolving Industrial Disputes speedily. *Chandrakant Tukaram Nikam* further holds that the power of Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate.

19. In *Petroleum Employees' Union*, the workmen and the Unions proposed to strike work despite the pending conciliation proceedings. So the appellant industry filed a suit and wanted the civil court to declare, among other things, the strike illegal. Let us see the interim reliefs the appellant industry has sought. The appellant-plaintiffs wants the Civil Court (a) to restrain the defendants, and their members from

(a-i) Proceeding and/or continuing on strike;

(a-ii) from in any manner obstructing the ingress and egress of ... ;

(a iii) holding any meetings, gathering in number, shouting slogans,

staging any demonstrations at the plaintiffs offices ... ;

(a-iv) entering upon any of the premises/establishments of the Plaintiffs except for the legitimate purpose of carrying out their normal duties;

(a-v) gheraoing or causing any obstruction or hindrance and intimidating and insulting in any manner any officer, visitors, or employees of the Plaintiffs;

(a-vi) displaying posters or sticking any banners, posters, etc., containing derogatory or offensive language ... ;

(a-vii) obstructing in any manner free movements of any vehicle

20.Indeed, the reliefs the appellant industry sought in *Petroleum Employees' Union* are almost identical to the ones sought in the suit, now, we are dealing with, save prayer clause (a-i).

21.In the suit, first, the appellant took out a notice of motion for *ad interim* reliefs. When it came up for hearing, the learned Single Judge “made an order declining urgent reliefs to the appellant in terms of clause (a)(i), but granted liberty to apply for reliefs in terms of prayer clauses (a)(ii) to (a)(vii) in case the workmen resorted to actions as contemplated in the said prayer clauses”.

22.Faced with the problem whether a civil suit would lie, a Division Bench of this Court, per B. N. Krsihna J (as his Lordship then was), in a brilliant disposition has, first, acknowledged as true that in common law, if several employees in concert and combination withdraw their labour and decide not to work, it would amount to a breach of contract. It was as a result of conspiracy to commit breach of contract which was actionable in common law. Then, employers repeatedly obtained restraint orders from Civil Courts by alleging the tort of conspiracy to commit breach of contract. And Civil Courts frequently issued such restraint orders. So it became necessary, both in England and in India, for the Legislature to step in to protect the nascent Trade Union movement. After observing thus, *Petroleum Employees' Union* has traced the legislative history and significance

of the trade union movement and adjudicatory measures for resolving the industrial disputes.

23. *Petroleum Employees' Union* has, then, considered the precedential position on the issue. In that regard, it has noted that the contest between the jurisdiction of a Civil Court and a special Tribunal constituted under a special statute to entertain causes of action has been the subject matter of discussion in *Dhulabhai v. State of M.P.*⁶, *Premier Automobiles Limited v. Kamlakar Shantaram Wadke*⁷ and *Rajasthan State Road Transport Corporation v. Krishna Kant*⁸. Then from *Krishna Kant*, it has extracted these propositions:

- “(1) Where the dispute arises from general law of contract, i.e., *where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an “industrial dispute” within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.*
- (2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.
- (3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called ‘sister enactments’ to Industrial Disputes Act, and which do not provide a forum for resolution of such disputes—the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.
- (4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate

6] AIR 1969 SC 78

7] AIR 2975 SC 2238

8] AIR 1995 SC 1715

government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*.

The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) ...

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946, are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to “statutory provisions”. *Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.*

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

(italics supplied)

24. *Petroleum Employees' Union* has also referred to Section 7-A of the ID Act. An Industrial Tribunal constituted under this section has jurisdiction to entertain industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule, and for performing such other functions as may be assigned to it under the Act. Reading of the two Schedules appended to the Act in conjunction with the definition of expression “industrial dispute” defined in Section 2(k) of the Industrial Disputes Act, it is not possible for the Court to accept the contention that a relief in the form of permanent injunction is beyond the Tribunal’s jurisdiction.

25. On the question whether the Industrial Tribunal can grant interim relief, *Petroleum Employees' Union* has held that, in the first place, the expression “Award” under Section 2(b) of the Industrial Disputes Act, 1947, includes an interim determination of any industrial dispute or of any other related question by the Tribunal. Further, the power of an Industrial Tribunal under Section 10(4) to adjudicate on matters “incidental” to the points of dispute referred for adjudication would conceivably include its power to grant interim relief. That the Tribunal has jurisdiction to grant interim relief in a Reference is no longer in doubt in view of the decisions of the Supreme Court in *Hotel Imperial v. Hotel Workers Union*⁹, and *Delhi Cloth & General Mills Ltd. v. Rameshwar Dayal, Additional Industrial Tribunal*¹⁰.

26. *Petroleum Employees' Union* has held that every obligation may not create a corresponding right in any particular or specific person. Often, statutes prescribe obligations—in a negative manner, at that—which are intended for the benefit of the public at large. These are obligations owed to the society as a whole. No one person is entitled to say that they create a right in his favour. If at all, it is for the society at large or the body politic to enforce them. A suit by any individual to enforce such an obligation in public domain would not be entertainable. The obligations of workmen or Trade Union contemplated by section 22 are obligations in realm [rem?], enforceable by the society at large. The only manner in which the statute contemplates their enforcement is indicated in section 26 of the Act which prescribes a penalty for any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the Act. The penalty is imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees, or with both.

27. In the end, on a conspectus of all the judgment cited and against the background of the relevant statutes, *Petroleum Employees' Union* has held that a case to restrain the employees from going on a strike, irrespective of

9] (1959) II LLJ 544

10] (1960) II LLJ 712

whether the proposed strike is legal or illegal under a special statute, cannot be brought in a Civil Court. So as to the prayer clause (a)(i) in the Notice of Motion, it was held to be beyond the Civil Court's jurisdiction. But as to the other prayers in clauses (a)(ii) to (a)(vii) of the Notice of Motion, the suit was held to be maintainable. In fact, the Division Bench has rejected the appellant's objections on the Civil Court's jurisdiction on all counts except that of 'strike'. Here, in this case, there is no relief concerning the workmen's striking the work.

28. In *Goa MRF Employees Union*, a union of employees secured a reference to Industrial Tribunal. It alleged that the employer-company had started changing the employees' conditions of service, pending reference of dispute. So it filed a complaint under S. 33-A of the ID act, seeking Interim reliefs. One of the reliefs is "to direct the company to cease and desist from changing service conditions of workmen and not to Implement the seven-day-running-system of the departments hitherto run on six-day-Sunday-off-system". The Industrial Tribunal rejected the application for Interim relief on the grounds that it had no power to grant interim reliefs sought as they were in the nature of injunction. Aggrieved, the union filed a writ petition. A learned Single Judge of this Court held that Industrial Tribunal had power to grant interim reliefs in the nature of injunction and directed Tribunal to decide the matter on merits. This occasioned a writ appeal by the company.

29. On the question of interim relief and the Industrial Tribunal's incidental powers, *Goa MRF Employees Union*, a co-equal Bench, has distinguished *Petroleum Employees Union's* case. According to *Goa MRF Employees Union*, the issue before the learned Division Bench in *Petroleum Employees Union* was whether an employer could maintain a suit to have the union enjoined from going on a strike even if the strike was illegal. *Petroleum Employees Union*, answering the issue, held that the civil Court had no jurisdiction. While so deciding, it referred to an argument about the Tribunal's incidental powers under S. 10. The argument that as the

Tribunal had no power to grant an interim relief, the Civil Court must entertain the suit. *Petroleum Employees Union* rejected that argument.

30. *Goa MRF Employees Union* points out that according to *Petroleum Employees Union* the power of an Industrial Tribunal under S. 10(4) to adjudicate on matters “incidental” to the points of dispute referred to adjudication would conceivably include its power to grant interim relief. That is, the Tribunal has jurisdiction to grant interim relief when a reference is made. In that context, *Goa MRF Employees Union* has held that

from the judgment of the Division Bench, all that can be spelt out is, that considering the language of S. 10(4), it will be open to the Industrial Tribunal to grant interim relief. These in our opinion are mere observations to repel an argument sought to be advanced. The issue was not directly in issue. Apart from the mere observations, the learned Division Bench has not answered the proposition of law, that an interim relief by way of preventive injunction can be granted and if granted how it will be enforced. Apart from that the order of the Division Bench was passed in respect of an *ad interim* relief and not in a final adjudication of the matter for it to be said to be a binding judgment of a Co-ordinate Bench of this Court.

31. Having observed thus, *Goa MRF Employees Union* has held that “the expression “incidental” under S. 10(4) while considering S. 33-A cannot include the power of granting any interim preventive relief. The jurisdiction to entertain the complaint is only on contravention of the provisions of S. 33-A”. According to *Goa MRF Employees Union*, any interim relief is granted under the powers conferred on the Tribunal under S. 10(4) of the Industrial Disputes Act, 1947, with respect to matters incidental to the points of dispute for adjudication and not outside it. Further, the Industrial Tribunal will have no powers to grant interim reliefs under Order 39, rules 1 and 2 of Civil Procedure Code. In other words, Tribunal constituted under the ID Act can exercise only those powers of the civil Court which are conferred upon it under S. 11(3) of Industrial Disputes Act, 1947, and no other powers.

32. *Goa MRF Employees Union* has further noted that Tribunal is a

creature of statute and can only exercise those powers which are conferred upon it expressly or by necessary implication. What is incidental, according to *Goa MRF Employees Union* is something associated with the main reference and which is secondary or minor and an adjunct to it. It cannot be something not associated with the main reference.

33.*Goa MRF Employees Union* has proposed another test to determine whether the Tribunal can grant an interim injunction: If an interim relief in the form of injunction is granted, how will the said order, if not complied with, be enforced or executed? There is nothing in the ID Act or the Rules either express or implied which could be read that the Tribunal has a right to grant interim relief in the form of injunction. No Court or Tribunal will grant a relief if it is incapable of enforcing it either by execution or otherwise. The expression “incidental” would not include an interim relief by way of preventive injunction. Therefore, even if it was held that there was such a power to grant relief there is no power or mechanism for the relief to be enforced. If there be a power to grant relief, there must also be power to enforce the relief. In that context it must be held that no power is conferred on the Tribunal or the other authorities under Chap. II to grant relief of injunction.

34.To conclude, *Goa MRF Employees Union* has held that for a Tribunal or Labour Court to exercise powers under the expression incidental, it must (1) arise from the terms of the reference and must be incidental to answering that reference and not an issue falling beyond or outside the terms of the reference; (2) the interim relief granted should be capable of being enforced under the provisions of the I.D. Act; (3) Complaint under S. 33-A can be entertained only on an employer committing a breach of S. 33 and not an apprehended breach or contravention.

35.It is not for me to pry open the controversy about whether an Industrial Tribunal has jurisdiction to grant an interim injunction or about what ‘incidental’ in section 10 (A) of the ID Act connotes. Nor is it within my province to see whether there is any precedential cleavage between

Petroleum Employees Union and *Goa MRF Employees Union*. The latter refers to the former and rules on the controversy. In that case, even between the two co-equal Bench decisions, the latter binds me.

36. Even otherwise, both *Petroleum Employees Union* and *Goa MRF Employees Union* hold that the Civil Court has jurisdiction. Let it rest there.

I, therefore, dismiss the Writ Petition. No order on costs.

DAMA SESHADRI NAIDU, J.

AP/-

**MARIA
AURA
PEREIRA** Digitally signed
by MARIA AURA
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