

\$~13 to 15

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

Date of decision: 11th August, 2021

+ **W.P.(C) 8140/2021 & CM APPL.25275/2021**

HINDUSTAN ENGINEERING AND GENERAL MAJDOOR
UNION THROUGH ITS GENERAL SECRETARY NARAYAN
SINGH Petitioner

Through: Mr. Mahesh Srivastava and Mr.
Vaibhav Manu Srivastava, Advocates.

versus

M/S DELHI INTERNATIONAL AIRPORT
PVT. LTD. & ORS. Respondents

Through: Mr. Anirudh Bakhru, Mr. Vierat K.
Anand, Ms. Srishty Kaul, Ms. Angna
Dewan, Mr. Rishab Singh, Mr.
Kumar Shashank and Mr. Harish
Nadda, Advocates.

14

WITH

+ **W.P.(C) 8145/2021 & CM APPL.25284/2021**

HINDUSTAN ENGINEERING AND GENERAL MAJDOOR
UNION THROUGH ITS GENERAL SECRETARY NARAYAN
SINGH Petitioner

Through: Mr. Mahesh Srivastava and Mr.
Vaibhav Manu Srivastava, Advocates.

versus

DELHI INTERNATIONAL AIRPORT
PVT. LTD. & ORS. Respondents

Through: Mr. Anirudh Bakhru, Mr. Vierat K.
Anand, Ms. Srishty Kaul, Ms. Angna
Dewan, Mr. Rishab Singh, Mr.
Kumar Shashank and Mr. Harish
Nadda, Advocates.

15

AND

+ **W.P.(C) 8160/2021 & CM APPL.25353/2021**

HINDUSTAN ENGINEERING AND GENERAL MAJDOOR

UNION THROUGH ITS GENERAL SECRETARY NARAYAN
SINGH

..... Petitioner

Through: Mr. Mahesh Srivastava and Mr.
Vaibhav Manu Srivastava, Advocates.

versus

DELHI INTERNATIONAL AIRPORT
PVT. LTD. & ORS.

..... Respondents

Through: Mr. Anirudh Bakhru, Mr. Vierat K.
Anand, Ms. Srishty Kaul, Ms. Angna
Dewan, Mr. Rishab Singh, Mr.
Kumar Shashank and Mr. Harish
Nadda, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present three petitions have been preferred by the Petitioner – Union, which represents various employees working as contractual workers at the Indira Gandhi International Airport, New Delhi. Respondent No.2 is the contractor through whom the employees were engaged. The contractual employees had approached the CGIT, seeking regularization and other reliefs. The said petitions are currently pending before the CGIT.
3. In the meantime, since the earlier contract was expiring, the Respondent No.1 i.e., M/s Delhi International Airport Private Ltd. (*hereinafter, 'DIAL'*) called for a fresh tender during April, 2021, for housekeeping and other services. Respondent No.3 was the successful tenderer. When the fresh tender was issued and the new contractor, i.e., Respondent No.3 was awarded the tender, an application under Section 33A of the Industrial Disputes Act, 1947 came to be filed by the contractual employees seeking interim relief, before the CGIT, which was rejected by

the impugned orders dated 26th March, 2021.

4. The submission of Mr. Mahesh Srivastava, Id counsel for the Petitioners is two-fold. Firstly, that the CGIT does have the power under Section 33A to pass interim orders. Reliance is placed upon the judgment of the Supreme Court in ***Management of Hotel Imperial & Ors. v. Hotel Workers' Union*, AIR 1959 SC 1342**. He further submits that this position has been reiterated in the judgment of the Supreme Court in ***Goa MRF Employees Union v. MRF Ltd., (2004) ILLJ 394 Bom***, thus, the CGIT ought to have considered the prayer for interim relief and not held that this power does not exist. Secondly, he submits that in the judgment of the Supreme Court in ***Steel Authority of India Ltd. & Ors. v. National Union Water Front Workers & Ors., AIR 2001 SC 3527***, the Supreme Court has held that even in the case of contractual employees, preference would have to be given to the erstwhile contractual employees even where the notification under Section 10(1) of the Contract Labour Regulation & Abolition) Act, 1970 has not been issued. Such preference would take care of contractual employees who have been working in the establishment for a long period.

5. On the other hand, Mr. Anirudh Bakhru, Id. Counsel for the Respondents, submits that insofar as the power of the CGIT is concerned, the same is now settled in various judgments of this Court, including the judgment in ***Airport Authority of India vs. Pyare Lal & Ors., [W.P.(C) 16649/2004, decided on 17th November, 2006]*** which has discussed the entire law on the subject. It is submitted that the said judgment clearly distinguishes between interim injunctions and interim awards. While the CGIT does have the power to pass interim awards, it cannot pass interim

injunctions, as is being sought for in the present case. Insofar as continuation of the contractual employees is concerned, he submits that since 1st April, 2021, the new contractor has already taken over and the manner in which the new contractor is engaging the contractual workers is not within the domain of Respondent No.1. So long as the new contractor complies with the tender conditions, Respondent No.1 does not interfere in the same.

6. Heard ld. counsels for the parties.

7. The first question that has been raised is in respect of the power of the CGIT. The CGIT, in the present case has held that there is no contravention of Section 33A and that no interim relief can be directed. The observations of the CGIT are as under:

“At the outset it is necessary to mention that section 33 of the Act clearly provides that during the pendency of a proceeding either before the conciliation officer or labour court or industrial tribunal no employer shall alter or change the condition of service of the workmen without written permission/ approval from the authority before which such proceeding is pending. In case of contravention of the provision of section 33 by the employer the aggrieved employee has been given the right to make a complaint in writing u/s 33A of the Act before the authority before whom such proceeding is pending at the time of retrenchment/discharge etc of the workmen. Section 33A of the Act enjoins upon the Industrial adjudicator a twin duty-the first is to find out whether the employer has contravened the provision of section 33 and whether the action taken is justified in law. As stated by the claimants they are employees of management No. 2 Nimbus Harbour Facilities management and the reference from the appropriate government was received to

adjudicate if non acceptance of the demand raised by the claimant Union by the said management Nimbus is just and proper. Neither anything to be adjudicated with reference to management No.1 DIAL or management No.3 Tenon Facility. There being no relief claimed against management No.1 and 3 in the pending industrial Dispute and there being no evidence on record to the effect that management No.1 has passed any order to terminate the services of these workmen w.e.f 01.04.2021 it cannot be held that the respondent have violated the conditions of section 33 of ID Act attracting liability u/s 33 A of the Id Act. The other prayer that management No. 3 be directed not to engage new persons w.e.f. 01.04.2021 cannot be granted since it will have the effect of an executable order since the said management has nothing to do with the service condition of the present claimants and his position nothing more than a contractor entering into a new contract with management No.1 i.e. DIAL.”

8. As is clear from the above order, the CGIT has noticed that the industrial dispute is pending before the CGIT and that the employer could not alter or change the conditions of service. However, in the present case, the employer is M/s Nimbus Harbor Facilities Management Pvt. Ltd. and not DIAL. Thus, there being no relief available against DIAL in the industrial dispute, the question of termination etc., does not arise.

9. A perusal of paragraph 12 of the judgment in **Pyare Lal (supra)** shows that the Id. Single Judge of this Court clearly distinguishes between interim awards and orders of injunction as contemplated in Order XXXIX CPC. The relevant portion of the said judgment is set out below:

“12. The consistent judicial view that appears from these judgments is that although an Industrial Tribunal/Labour Court can in certain situations pass an interim award, it has no jurisdiction to pass an order of injunction of the nature which a civil court can pass under the provisions of Order 39 of the CPC.

13. It requires to be noted that in the case of Hotel Imperial (supra) the Supreme Court distinguished between interim relief and interim award. Interim award is interim determination of any question relating to the reference whereas interim relief was a relief granted under the power conferred on the Tribunal under Section 10(4) of the Act with respect to the matters incidental to the points of dispute for adjudication. The respondents asked for the relief of prevention of breach of a statutory provision. The same could not have been asked for either by way of an interim award or by way of an interim relief because such a question was neither a part of the question to be adjudicated upon nor incidental to the main question which was whether the petitioners were entitled to be regularized in the service of the petitioner. The respondents asked for a relief which, as discussed above, the CGIT did not have any power to grant under any provision of Section 33 of the Act. Even if the respondents seek protection under the Supreme Court's opinion in the Imperial Hotel's case, their prayer has to be turned down because the prayer of the respondents was not in the nature of an interim relief or interim award when seen in the light of the terms of reference, extracted in the first paragraph of this judgment.

14. The injunction order, a mandatory one, passed by the CGIT has virtually granted the final

relief to the respondents inasmuch as the respondents have been secured in the service of the petitioner despite the petitioner's plea that it was not at all the employer of the respondents. In the Hotel Imperial's case the Supreme Court specifically said:

Ordinarily interim relief should not be the whole relief that the workman should get if they succeeded finally.

In fact the Supreme Court did not uphold the interim order in the Hotel Imperial case. It passed a fresh order only for half of the salary as against full salary awarded by the Tribunal.”

10. More recently, the judgment in ***Pyare Lal (supra)*** has been relied upon by another Id. Single Judge of this Court in ***Indian Oil Corporation Ltd. v. UOI & Ors., 2012 SCC OnLine Del 4889***, wherein it has been held as follows:

“4. Apprehending that their services might be terminated by way of non-renewal of the contracts with the contractors by the management of IOC, during the pendency of the reference proceedings before the CGIT the respondents 3-33 herein filed an application before the CGIT for an interim relief so that their employment remained intact during the pendency of the proceedings in respect of their demand for the regularization of their services by the petitioner.

5. The CGIT vide its order dated 25th April, 2005 allowed the interim relief application filed by the respondents no. 3-33 and directed maintenance of status quo by the petitioner herein as well as the contractors concerned, in respect of their employment during the pendency of the reference proceedings.

...

9. *In the opinion of this Court this writ petition deserves to be allowed since the impugned order of the CGIT cannot be sustained in view of the fact that this Court has already held in two decisions that the industrial court has no power to grant interim injunction during the pendency of adjudication proceedings in respect of any industrial dispute. A Single Judge Bench of this Court had vide judgment dated 17.11.2006 in W.P. (Civil) No. 16649/2004, 'Airport Authority of India v. Pyare Lal' had while considering a similar kind of challenge against the order of CGIT granting an interim relief in the nature of injunction in favour of the employees who had also been employed through contractors had held as under:- ...”*

11. The question raised in ***Management of Hotel Imperial & Ors. (supra)*** i.e., 'Does the Industrial Tribunal have the power to grant reliefs including in the nature of injunction in a complaint filed before it under Section 33A of the Industrial Disputes Act, 1947?', has been referred to a larger Bench vide order dated 8th March, 2006 in ***Civil Appeal No.1007/2004*** titled ***Goa MRF Employees Union v. M/s MRF Ltd.*** and the same is stated to be pending before the Supreme Court. This Court has, however, considered the present matter and is clearly bound by the opinion of the Id. Single Judge in ***Pyare Lal (supra)*** and ***Indian Oil Corporation (supra)***, where a distinction has clearly been drawn between interim injunctions and interim awards.

12. In these matters, the new contractor - M/s Tenon Facility Management India Pvt. Ltd. has already taken charge of the services. The concerned members of the Petitioner-Union are not working with the DIAL and were contractual employees. Their contracts having come to an end and

a new contractor having already taken charge of the services at DIAL, the passing of an order today giving any protection to the concerned members of the Petitioner-Union would, in effect, displace various employees who may now have been engaged on contract by Respondent No.3 and already working at the airport. Services rendered at the airport are 'essential services' and disruption in the same cannot be effected in any manner.

13. The impugned order is dated 26th March, 2021. However, the first listing before this Court has been on 10th August, 2021 i.e., yesterday. Several months have already passed since the concerned members of the Petitioner-Union have been out of employment. Thus, interim relief, at this stage, cannot be granted. However, if the new contractor i.e., M/s Tenon Facility Management India Pvt. Ltd. still requires services of these contractual workers, it may consider engaging them in view of their experience, if they are found eligible. This shall, however, not result in any disturbance to the contractual workers already engaged by Respondent No.3.

14. With these observations, the present petition, along with all pending applications, is disposed of. Needless to add that the observations herein shall not affect the case of the Petitioners before the CGIT.

PRATHIBA M. SINGH
JUDGE

AUGUST 11, 2021

dj/T

(corrected and uploaded on 13th August, 2021)