

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5654 of 2012

M/s. Orissa Power Generation Corporation Ltd., ***Petitioner***

M/s. D.P. Nanda, Sr. Advocate and Associates
-versus-

Conciliation Officer-cum-Asst. Labour Commissioner, Bhubaneswar and another ***Opposite Parties***

Mr. P.K. Muduli, AGA
Mr. A.K. Mohapatra, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
27.07.2022**

Order No.

12. 1. Aggrieved by an order passed by the Conciliation Officer-cum-Assistant Labour Commissioner, Bhubaneswar, rejecting its application under Section 33(2)(b) of the Industrial Disputes Act, 1947 by the impugned order dated 2nd March 2012, the present writ petition has been filed by the Management, i.e., M/s. Orissa Power Generation Corporation Ltd. While directing notice to issue in this present petition on 4th April 2012, the operation of the impugned order was stayed. That stay order has continued for over ten years now.
2. The Opposite Party No.2 was charge sheeted by the Management on 4th June 2006, on the ground that he had availed personal loans by forging the signature of the DDO, the Management and also ensured that the Management became the guarantor for such loan.

Contending that the Opposite Party No.2 had in his reply to the charge sheet admitted to the charges and adhered to repay the loan, the Management initially decided not to hold any disciplinary enquiry on the basis that Opposite Party No.2 had admitted the charges. The Disciplinary Committee straightway issued an order of dismissal on 7th May, 2007. Simultaneously, on the same day the Management filed an application under Section 33(2)(b) of the ID Act before the CO-cum-ALC for approval of the action taken by it. This was because there was a pending conciliation proceedings consequent upon one of the worker's unions giving a charter of demands which was pending with the CO since 9th December, 2003.

3. It must be mentioned here that this is the second round litigation before the High Court. In the first round, the Management's aforementioned application filed before the CO-cum-ALC was rejected by the CO on 23rd June, 2007. That order was challenged by the Management by filing W.P.(C) No.8133 of 2007 in this Court. The said writ petition was disposed of by this Court on 30th April, 2010 remanding the matter to the CO for a fresh enquiry and to decide it in accordance with law.

4. In the meanwhile, it appears that the Management changed its mind about not holding an enquiry and decided to appoint a sub-committee to enquire into the charges and issued notice to the Opposite Party No.2- Workman. The Workman declined to participate stating that the relationship of employer and employee already stood severed by the dismissal order issued on 7th May,

2007. Nevertheless, the Management proceeded against him ex parte and held him guilty of the charges.

5. On 2nd March, 2012, the impugned order was passed by the CO. After noticing all of the above facts, the CO has proceeded to decline the permission under Section 33(2)(b) of the ID Act.

6. Learned counsel for the Petitioner has relied on the Judgment of the Supreme Court in *Management, Essorpe Mills Ltd. v. Presiding Officer, Labour Court and others AIR 2008 SC 2504* to urge that the CO had no jurisdiction to adjudicate the correctness of the order of dismissal and notwithstanding that there may be a contravention of the provisions of Section 33 of the ID Act, it would not affect the order of dismissal.

7. In the present case, with the Management itself invoked Section 33(2)(b) of the ID Act. The question, therefore, of failure to comply with the said provision did not arise. Secondly, it is seen here that the occasion for the CO to discuss the order of dismissal arose only because of the Management insisting that he should rehear the application on merits.

8. The short point before the CO was whether the action of the Management in dismissing the Workman on 7th May 2007, without first seeking the approval of the CO under Section 33(2)(b) was justified? On its own showing, the Management first passed a dismissal order without an enquiry and thereafter, on its own decided to hold an enquiry even before the decision could be rendered by the CO on its application under Section 33 (2) (b) of the ID Act. Therefore, there was an implicit admission by the

Management that the earlier dismissal order was unsustainable in law.

9. The Court therefore is unable to find any error having been committed by the CO in declining the permission under Section 33(2)(b) of the ID Act. The legal consequence of such rejection of the application only means that the enquiry would have to be held afresh after proper notice to the Opposite Party No.2- Workman. The Management itself realized this and therefore on its own during the pendency of the proceedings before the CO initiated the inquiry proceedings. With the impugned order of the CO declining permission, the ex parte completion of the enquiry against Opposite Party No.2 has no legal basis. The consequence is that it will be open to the Petitioner- Management to conduct an enquiry afresh in accordance with law.

10. The Court finds therefore, no reason to interfere with the impugned order of the CO. The writ petition is accordingly dismissed. The interim order passed earlier is hereby vacated.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera