

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 14th Oct. '14.

C.R.P. No. 01 of 2010.

[Arising out of order dated 19.12.2009 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in Civil Suit No.429 of 2009.]

1. M/s. Orissa Power Generation Corporation Ltd.,
Represented through its Managing Director, 7th Floor,
Zone-A, Fortune Towers, Chandrasekharpur,
Bhubaneswar - 751 023.
2. The Managing Director, M/s. Orissa Power Generation
Corporation Ltd., 7th Floor, Zone-A, Fortune Towers,
Chandrasekharpur, Bhubaneswar - 751 023.
3. The Sr. General Manager (P&A), M/s. Orissa Power
Generation Corporation Ltd., 7th Floor, Zone-A,
Fortune Towers, Chandrasekharpur, Bhubaneswar - 751
023.
4. The Manager (Personnel), M/s. Orissa Power Generation
Corporation Ltd., 7th Floor, Zone-A, Fortune Towers,
Chandrasekharpur, Bhubaneswar - 751 023.

... **Petitioners.**

(Defendants in the Court below)

-V e r s u s-

1. The Orissa Tapaja Bidyut Nigam Karmachari Sangha, Plot No.550, Vivekananda Marg, Bhubaneswar -2, Dist. - Khurda, represented through its General Secretary.
2. The Orissa Power Generation Corporation Employees' Union, Plot No.151, Sahid Nagar, Bhubaneswar - 751 007, Dist. - Khurda, represented through its General Secretary.

... **Opp. Parties.**

(Plaintiffs in the Court below)

Counsel :

For Petitioners	--	Shri D.P. Nanda & Associates.
For O.P.No.1	--	None (Set ex parte).
For O.P. No.2	--	Ms. S. Mishra & Associates.

Date of conclusion of argument : 15.09.2014.

Date of order : 14.10.2014.

O R D E R

This revision has been directed against the order dated 19.12.2009 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in Civil Suit No.429 of 2009, rejecting the petition filed by the defendants (the petitioners herein) under Order 7, Rule 11(d) of the C.P.C.

2. The parties hereinafter have been referred to as they have been arrayed in the trial Court for the sake of convenience and proper appreciation.

3. The backdrop of the case of the petitioners is that

they are defendants and the opposite parties are plaintiffs in the Court below. It is the case of the plaintiffs that they are Trade Unions, defendant No.1 is a Company registered under the Companies Act and defendant Nos.2 to 4 are its employees. The office hours of defendant No.1 is from 10.00 A.M. to 5 P.M., including half an hour for lunch break, and they are required to work seven hours per day. But, suddenly, from 1st October, 2009, a Circular was issued by the defendants to work one hour more i.e. from seven hours to eight hours. They also took the plea that since there was no objection from the side of the Union, such procedure to work from 9 A.M. to 5 P.M. (except second and last Saturday) with lunch break was adopted; but the aforesaid Union resisted the same stating that it is violation of the provisions under section 9A of the Industrial Disputes Act, 1947 (hereinafter called "the Act"). Thereafter, the office of the defendants directed to issue necessary instructions, which was duly circulated vide Notification dated 09.11.2009. Since the decision was unilateral and it hampers the interest of the workmen, prayer was made to restrain the defendants from implementing the Circular bearing No.OPGC/2369 dated 09.09.2009 and all other subsequent Notifications.

4. The case of the defendants, in brief, is that such

plaint filed by the plaintiffs for declaration of right, title, interest and permanent injunction against them is not maintainable under the Act. Learned counsel appearing for the defendants submitted that section 37 of the Act has prohibited to file any legal proceeding against any person for anything which is in good faith done or intended to be done in pursuance of this Act. He further contended that the action of the Management in increasing the working hours to statutory limits is expressly done in pursuance of the statutory provisions contained in the Act, which also prohibits such institution of the suit. It is thus prayed by the defendants to reject the plaint under Order 7, Rule 11(d) of the C.P.C.

5. After hearing the petition under Order 7, Rule 11(d) of the C.P.C., the learned Court below rejected the same stating that the present suit is not hit either by section 37 of the Act or by section 41 of the Orissa Shops and Commercial Act and the lower Court has got jurisdiction to decide the dispute raised in the suit. Against such order, the present revision has been preferred.

6. Before going further, let me have a glance at Order 7, Rule 11(d) of the C.P.C. Under the said provision, the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. So, the

statement in the plaint has to be taken into consideration with reference to all the particulars, as mentioned under Order 7, Rule 1 of the C.P.C. On the other hand, without going through the written statement, the Court must find out from the statement of the plaint apparent on the face of the record as to whether it is barred by any law so as to invoke the provisions under Order 7, Rule 11(d) of the C.P.C. if the plaint is to be rejected. I went through the entire plaint. The allegation on issuance of circular bearing No.OPGC/2369 dated 09.09.2009 by the defendants is to the effect that office timings in the Corporate Office and MHP Divisions are rescheduled from 9 A.M. to 5 P.M. (Monday to Saturday except second and last Saturday of the month) with lunch break from 1.30 P.M. to 2 P.M., which would come into force w.e.f. 1st October, 2009. It is also alleged in the plaint that such changing of time unilaterally by the defendants has affected the conditions of service to the employees because the normal working hours is from 10 A.M. to 5 P.M. includes half an hour lunch break. In the plaint, it is further alleged that such procedure is against the provisions under section 9A of the Act because defendant No.1 is an Industry. It is also alleged that wherever any change in the conditions of service is to be effected, there should be a Notice as per Rule 36 of the Orissa Industrial Dispute Rules,

1959. Since there is violation of the provisions of the Act and the said Rules and issuance of such Circular affects the rights enjoyed by the employees of the plaintiffs' Union under law and Constitution of India, they have filed the suit for permanent injunction from implementing the Circular dated 09.09.2009 and also prayed for temporary injunction against the defendants from taking any coercive action against the Employees' Union. They have filed the documents in support of their contention, which show that the Circular was issued on 09.09.2009 by defendant No.1 and such order has also been issued by office order dated 05.10.2009. Further, such Circular was again issued on 06.10.2009.

7. Section 9 of the C.P.C. states that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Thus, by virtue of the said provisions of the C.P.C., all suits are cognizable except the suits either expressly or impliedly barred by any other law. Now, let me elicit the definition as to industrial dispute as occurred in section 2(k) of the Act, which says :

“industrial dispute” means any dispute or difference between employers and employees, 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.

8. Here the question arises as to issuance of impugned Circular raising hours of work and rest intervals. It appears that the Circular was issued by the employer for the employees, who are under the plaintiffs' Union. Section 7A of the Act prescribes that the Industrial Tribunal has got power to adjudicate the industrial disputes specified in the Second Schedule or the Third Schedule of the Act. On going through the Second Schedule, it appears that the application and interpretation of the standing order is under such Schedule and similar hours of work and rest intervals are also the matters prescribed in the Third Schedule. Thus, the industrial disputes with respect to such matters are subject to adjudication by the Industrial Tribunal under the Act. Of course, 9A of the Act prescribes that no employer who proposes to affect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule shall effect such change without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. Fourth

Schedule contains about hours of work and rest intervals. So, notice is necessary under the Act for giving effect to any change in the hours of work or rest intervals. But, reading of sections 7, 7A, 9A together with Second Schedule, Third Schedule & Fourth Schedule of the Act, it comes out that the Industrial Tribunal can adjudicate the matters relating to the standing orders issued for change of hours of work or rest intervals with or without notice. On the other hand, industrial disputes with regard to the issue in question in this suit, as apparent on the face of the plaint, is impliedly barred under the Act. I also rely upon the decision reported in **1975 STPL (LE) 7989 SC (Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke and Others)** where Their Lordships have been pleased to observe at paragraphs 23 & 24 :

“23. To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus :

(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 or 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.

24. We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a 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, such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above”.

9. With due respect to the above decision, I find that cases under industrial disputes cannot be raised in the Civil Court. Now, with regard to injunction, either permanent or temporary, has been lucidly decided in the aforesaid case. Their Lordships have been pleased to observe at para-29 that :

“29. One more difficulty in the way of the sustainability of the order of injunction may also be indicated. Temporary injunction can be granted under sub-section (1) of Section 37 of the Specific Relief Act, 1963 but a decree for

perpetual injunction is made under sub-section (2). Grant of perpetual injunction is subject to the provision contained in Chapter 8. Under Section 38(1) a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour irrespective of the fact whether the obligation arises at common law, under a contract or under a special statute (subject to the point of jurisdiction). But sub-section (2) provides that when any such obligation arises out of contract the Courts shall be guided by the rules and provisions contained in Chapter 2. Section 14(1)(c) occurring in that chapter says that a contract which is in its nature determinable cannot be specifically enforced. The contract in question embodied in the written agreement dated the 31st December, 1966 was in its nature determinable under Section 19(2) of the Act or could be varied by following the procedure under S.9A. Section 41(a) of the Specific Relief Act says that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. Section 42 providing an exception to this is not attracted in this case. The decree or order of injunction made therein, therefore, is not sustainable on this account too”.

10. With due respect to the said decision, I find in the instant case, the genesis of the suit is barred under the Act and, as such, section 41(a) of the Specific Relief Act also bars to issue permanent injunction and also temporary injunction against the opposite parties from giving effect to the impugned Circular, which is disputed by the employees against the employers.

11. On going through the impugned order, it appears

that the learned Court below has not delved deep into the issue properly while discussing the matters in question and misdirected himself while interpreting section 9A of the Act without further referring to the same as per the Schedules of the said Act. Be that as it may, the conclusion arrived at by the learned Court below is not concurred with. On the whole, as per the discussion made above, it is found that the suit, as appears from the statement in the plaint, is impliedly barred by the provisions of the Act, since such claim can be agitated before the appropriate forum under the provisions of the Act. It appears that the learned Civil Judge (Jr. Division), Bhubaneswar has not properly exercised his jurisdiction, for which the impugned order is liable to be interfered with in this revision. Hence ordered :

O R D E R

The Civil Revision is allowed. The order dated 19.12.2009 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in Civil Suit No.429 of 2009 is hereby set aside. No cost.

**District Judge, Khurda
at Bhubaneswar.**

14.10.2014.

Dictated, corrected by me and pronounced in the open Court this day the 14th October, 2014.

**District Judge, Khurda
at Bhubaneswar.**

14.10.2014.