

Heard Mr. S.N. Sarma, learned senior counsel assisted by Mr. J. Roy, learned counsel appearing for the petitioners. Also heard Mr. D.Saikia, learned Senior Additional Advocate General assisted by Mr. D. Nath, learned State Counsel appearing for the State respondents and Mr. R. Borpujari, learned counsel appearing for the respondent Assam Tourism Development Corporation (ATDC).

2. The 49 writ petitioners in this writ petition claim to be working in the Brahmaputra Ashok Hotel since 1990 and thereabout. A decision had been taken by the respondent ATDC, who presently owns and operates the hotel to close down the same. As a consequence of such closure, about 56 permanent employees of the hotel were given a benefit of a scheme in the nature of a Voluntary Retirement from Service (VRS), whereby certain financial benefits were granted to them. But in respect of the present 49 writ petitioners, such benefits have not been given.

3. Mr. S.N. Sarma, learned senior counsel for the petitioners by taking recourse to Section 25-o of the Industrial Disputes Act, 1947 has stated that no such permission for closure had been granted as required u/s 25-o (1) of the said Act and therefore, u/s 25-o (6) of the said Act, the closure is an illegal closure and therefore, the petitioners are entitled to an interim direction that the said hotel Brahmaputra Ashok Limited be directed to continue to operate as it was operated earlier.

4. It is noticed that Section 25-o of the said Act provides that in the event appropriate permission had not been taken, or such permission has been refused for a closure of an industrial establishment, the closure of such establishment will be deemed to be an illegal closure. It is further noticed that the implication of such deemed illegal closure is that a workman will continue to get their financial remuneration as they were getting while the establishment was operational.

5. Against such submission of the learned senior counsel for the petitioners, Mr. D. Saikia, learned Senior Additional Advocate General, Assam appearing for the State respondent authorities has produced an agreement dated 27.12.2013 between the Hotel Brahmaputra Ashok and an entity namely M/s Brahmaputra Enterprise. It is submitted that as per the said agreement, the present petitioners are no longer employees under the Hotel Brahmaputra Ashok and as per the agreement, they are workmen directly under the labour contractor namely M/s Brahmaputra Enterprise. Secondly, the said agreement between the Hotel Brahmaputra Ashok and M/s Brahmaputra Enterprise came to an end in the meantime, but has been extended up to 31.08.2017. Accordingly, it is the submission of the learned Senior Additional Advocate General that the present petitioners are not employees of the Hotel Brahmaputra Ashok, Guwahati in any manner and therefore, they are not entitled to the benefits as contemplated u/s 25-o of the Industrial Disputes Act, 1947.

6. A further objection has also been raised on the maintainability of the writ petition inasmuch as, the present writ petitioners have in the meantime submitted an application dated 17.08.2017 before the Assistant Labour Commissioner, Assam at Ulubari, Guwahati inter-alia, praying for an order for some equal status with that of the permanent employees and also for consequential financial benefits. Another application had been filed by the petitioners before the Assistant Labour Commissioner, Ulubari, Guwahati dated 22.08.2017, wherein a prayer had been made for a direction to the Management of Hotel Brahmaputra Ashok not to close down without complying the statutory provisions of the Industrial Disputes Act, 1947.

7. Accordingly, it is the submission of the learned Senior Additional Advocate General that this writ proceeding is not maintainable as the relief claimed in this writ proceeding are substantially covered by the aforesaid applications before the Assistant Labour Commissioner, Ulubari, Guwahati.

8. Under the aforesaid premises, Mr. S.N. Sarma, learned senior counsel for the petitioners has prayed for an interim order directing the respondent authorities not to close down the Hotel Brahmaputra Ashok till the labour dispute raised by the petitioners is adjudicated and for the purpose, the learned senior counsel

nsel relies upon Section 25-o of the Industrial Disputes Act, 1947 to substantiate that without complying with the requirement of closure permission, the closure of the Hotel Brahmaputra Ashok would be illegal.

9. In this aspect, this Court prima-facie is not in agreement with the learned senior counsel for the petitioners inasmuch as, Section 25-o provides that in the event the procedure of permission for closure is not followed, the closure shall be deemed to be illegal. There is a difference between a provisions being illegal and deemed to be illegal. It is also understood that the provisions of Section 25-o (6) is that in the event the required procedure is not followed, the closure will be deemed to be illegal and the workman will continue to get their remuneration as they were getting earlier.

10. In such view of the matter, this Court is of the view that by referring Section 25-o (6), a positive direction to the respondent authorities cannot be issued not to go ahead with the closure of the Hotel Brahmaputra Ashok.

11. But in any view of the matter, it definitely appears to this Court that there is some prima-facie case on the part of the petitioners as regards their entitlement under the labour laws in the event the Hotel Brahmaputra Ashok is closed.

12. In order to deliberate upon the matter further, let a notice of motion be issued returnable on 04.09.2017.

As Mr. D. Nath, learned State Counsel accepts notice on behalf of the respondent Nos. 1, 2, 7, 8 and 11 and Mr. R. Borpujari, learned counsel on behalf of the respondent No.3, no formal notices are required to be issued. However, extra copies of the writ petition be furnished to the learned respective counsel by tomorrow.

The petitioners are to take steps for service of notice on the respondent Nos. 4, 5, 6, 9 and 10 by registered post with AD cards within two days. Considering the urgency in the matter, the petitioners are also allowed to take Dasti service upon the said respondents through the Registry of this Court.

13. The State respondents shall file their affidavits in opposition incorporating their response to the writ petition.

14. In view of the background that the petitioners who were earlier serving in the Hotel Brahmaputra Ashok, either as contract/casual employees or as employees of the labour contractor namely M/s Brahmaputra Enterprise, as the case may be, it is apprehended that the closure of the Hotel Brahmaputra Ashok would lead to a situation where they would not longer continue to serve as such and as such there is some urgency in the matter for an early adjudication. It is also stated that earlier the Hotel Brahmaputra Ashok was owned by an entity comprising of Government of Assam and the Indian Tourism Development Corporation having a share of 51% and 49% respectively.

15. It is stated by Mr. S.N. Sarma, learned senior counsel for the petitioners that the records pertaining to the engagement of the petitioners are presently being seized as per an FIR lodged by them resulting in Panbazar Police Station Case No.442/2017. Depending on the stand taken by the respondent authorities in their affidavit in opposition regarding the engagement of the petitioners prior to the contract agreement of 2013, this Court will consider whether the said records are required to be called for or not.

List the matter again on 04.09.2017 for further consideration.