

# Ms Ashok Hotel vs Nanda Boishya And Ors on 13 February, 2023

**Author: Satish Chandra Sharma**

**Bench: Chief Justice, Subramonium Prasad**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
LPA 11/2023 & CM APPLs. 989/2023, 991/2023  
MS ASHOK HOTEL

Through: Mr. Ravi Sikri, Sr. Advo  
Sumitra Choudhary, Ms. R  
Bhajpai and Mr. M. K. Ra  
Raman, Advocates.

versus

NANDA BOISHYA AND ORS.

Through: Mr. A. P. Dhamija, Mr. J  
and Ms. Tanya Sharma, Ad

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 13.02.2023

1. The present LPA arises out of the Judgment dated 17.06.2022 and a subsequent clarificatory Order dated 03.11.2022 passed in CM APPL. 45053/2022 by the learned Single Judge in W.P.(C) 9511/2022.

2. CM APPL. 45053/2022 has been filed by the Petitioners (Respondents herein) for clarification of the Order dated 17.06.2022 passed by the learned Single Judge in W.P.(C) 9511/2022. The said writ petition i.e., W.P.(C) 9511/2022 had been filed by the Respondents herein seeking quashing of a letter dated 01.06.2022 issued by the contractor by which the Respondents were informed that they will have to work under a contractor engaged by the Appellant. The learned Single Judge disposed of the said writ petition by passed a consent Order dated 17.06.2022. The relevant portion of the said Order reads as under:

"4. After some hearing, Mr. A.P. Dhamija, learned counsel appearing on behalf of the Petitioners, on instructions, submits that since the Petitioners have been working with Respondent No.1 for many years and at this stage will be unable to find any other employment, they are willing to be employed under the new contractor, with a caveat that they may be given liberty to raise the issues of salary, etc. in an

appropriate Forum.

5. Mr. Sikri has no objection to the said arrangement provided the rights and contentions of Respondent No.1 with respect to other issues relating to salary, emoluments, conditions of service are left open.

6. In view of the aforesaid, Petitioners are at liberty to join the new contractor appointed by Respondent No.1. As agreed, the joining of the Petitioners would be without prejudice to the rights and contentions of the parties to the lis, with respect to salaries and emoluments and other terms and conditions of service, which they are at liberty to raise in an appropriate Forum."

3. The abovementioned Order has been sought to be clarified by the Respondents by filing CM APPL. 45053/2022 before the learned Single Judge. The said application was disposed of by the learned Single Judge vide Order dated 03.11.2022 which is also impugned herein in the appeal.

4. During the pendency of the appeal, the Appellant herein was asked to find out as to whether the writ petitioner being ex-servicemen can be accommodated with the Appellant/employer. Mr. Ravi Sikri, learned Senior Counsel for the Appellant, after taking instructions, submitted before this Court that the writ petitioners can be taken back into service subject to the following conditions:

(a) Wages as applicable in the tender terms & conditions only will be paid to the concerned workmen.

(b) The workmen will have no right on claiming the DGR wages.

(c) Since the contractor holds the tender for pan ITDC units, contractor will be free to post them anywhere across any ITDC units & not limited to the Hotel Ashok only."

5. Mr. A. P. Dhamija, learned Counsel appearing for the Respondents/workmen, contends that as far as the right of Respondents/workmen claiming DGR wages is concerned, the said issue has been left open by the learned Single Judge vide Order dated 17.06.2022, and therefore, the said issue should be left open.

6. In light of the aforesaid submission made by the learned Counsel for the Respondents/workmen, the Respondents/workmen are free to agitate the issue of DGR wages before an appropriate forum.

7. Mr. Ravi Sikri, learned Senior Counsel for the Appellant, was fair enough in stating before this Court that the employees in question shall be accommodated in Delhi itself and none of the employees is going to be transferred out of Delhi and they shall be posted at units which are located in Delhi only.

8. Learned Counsel appearing for the Respondent has also consented to the aforesaid submission made by the learned Senior Counsel appearing for the Appellant as well as the Order passed by this

Court today.

9. In light of the aforesaid, the instant LPA is disposed of, along with pending application(s), if any.

10. Mr. Ravi Sikri, learned Senior Counsel for the Appellant, was also fair enough in stating before this Court that in view of the consent Order is being passed and keeping in view the peculiar circumstances of the present case, the same shall not be treated as precedent.

11. The present matter is being disposed of with the consent of the Parties and keeping in view the peculiar facts and circumstances of the case, the same shall certainly not be treated as precedent in future.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J FEBRUARY 13, 2023 S. Zakir