
(2002) 08 CAL CK 0025
In the Calcutta High Court
Case No : C.R.R. No. 953 of 2002

Asoke Aikat

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Companies Act, 1956 — Section 33C(1)
Criminal Procedure Code, 1973 (CrPC) — Section 421(1)
Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (2002) 4 CHN 730 : (2003) 97 FLR 1080

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Milon Mukherjee and S.R. Paul, for the Appellant; Saswata Gopal Mukherjee and Swapan Kumar Mallick for respondent Nos. 3 to 9, for the Respondent

Final Decision : Dismissed

Judgement

Debiprasad Sengupta, J.—In the present application the petitioner has challenged Misc. Execution Case No. 16 of 2000 u/s 33-C of the Industrial Disputes Act, 1947 as amended by Section 18 of the Industrial Disputes (W.B. 2nd Amendment) Act, 1980 now pending in the court of learned Chief Judicial Magistrate, Burdwan.

2. In terms of Order No. 382-IR dated 28.2.2000 passed by the Assistant Secretary to the Government of W.B., the Deputy Labour Commissioner, Burdwan lodged a complaint with a prayer for initiating a proceeding for recovery of the amount of Rs. 6,65,809. 25 due to the workmen, before the learned Chief Judicial Magistrate, Burdwan which was registered as Misc. Execution Case No. 16/2000. On receipt of such complaint the learned Magistrate took cognizance of the offence and directed summons to be issued upon the petitioner fixing 2.6.2000 for further order and payment. On 2.6.2000 the matter was adjourned and thereafter by an order dated 12.7.2000 the learned Magistrate after

receiving the service return of "refusal" by the petitioner, issued warrant of arrest, which was challenged by the petitioner before the learned Sessions Judge, Burdwan, The concerned workmen also filed an application before the learned Sessions Judge for impleading them as parties to the revisional application which was pending before the Sessions Judge. Such petition was allowed and the workmen was directed to be added as parties to the said revisional application. Such order of the learned Sessions Judge was challenged before this court in C. R. R. 3065 of 2000, which was disposed of by this court on 8.1.2001 with a direction upon the learned Sessions Judge to dispose of the revisional application within a period of four weeks from the date of communication.

3. The revisional application was thereafter disposed of by the learned Sessions Judge on 13.2.2001 and the case was sent back to the learned Magistrate with a direction to proceed with the matter in accordance with law. Challenging such order dated 13.2.2001 this court was again moved in CRR-719 of 2001 which was disposed of by this court in 19.7.2001 directing the learned C. J. M., Burdwan to expedite the proceeding and to conclude the same with utmost expedition.

4. After the matter was sent back, the learned Magistrate fixed 15.12.2001 for service return and appearance. The petitioner on the said date again made a prayer for adjournment, which was rejected by the learned Magistrate and 21.1.2002 was fixed for payment of money. Such order dated 15.12.2001 was again challenged by the petitioner before the Sessions Judge, who by his order dated 28.2.2002 affirmed the order dated 15.12.2002 passed by the learned Magistrate. The said order dated 28.2.2002 is the subject matter of challenge in the present revisional application.

5. Referring to the provision of Section 33-C(1) of the Companies Act, it is submitted by the petitioner's learned Advocate that if the Government is satisfied that any amount is due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the manner as provided in the said section. The learned advocate also refers to the State Amendment of Section 33-C(1) which is as follows:--

West Bengal

In Sub-section (1) of Section 33C of the principal Act, for the words "to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue", the words "to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall proceed to realise the money as if it were a fine imposed by such Magistrate".

6. Now it is very much clear that in view of the amending provision as aforesaid the learned Chief Judicial Magistrate or the Chief Metropolitan Magistrate has been empowered to proceed in such matter for realisation of the amount due in such a way as if it were a fine imposed by such Magistrate.

7. The petitioner's learned Advocate next refers to the provision of Section 421(b) Cr. P. C. which provides for warrant for levy of fine. It provides that when offender is sentenced to fine, the court imposing such fine may take action for the recovery of the fine in either of the two ways referred to in Clauses (a) and (b) of Section 421 Cr. P. C. The learned Advocate refers to Clause (b) which provides that the Magistrate may issue a warrant to the Collector of the District authorising him to realise the amount. It is the contention of the petitioner's Advocate that the learned C. J. M cannot realise the amount without the assistance of the Collector. But in the present case, it is the contention of the petitioner's learned Advocate, the learned C. J. M passed an order directing the petitioner to make the payment in court on the date fixed, which is never permitted under the existing provisions of law. But I am unable to accept such contention of the learned Advocate of the petitioner. In such cases the money can be recovered by the learned Magistrate by adopting the procedure laid down in Clause (a) to Subsection (1) of Section 421 Cr. P. C., which is as follows:--

"421. Warrant for levy of fine. --(1) When an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may--

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) *****

8. The next argument advanced by the learned Advocate of the petitioner is that the State amendment of Section 33-C(1) is in direct conflict with the parent Section 33-C(1) of the Industrial Disputes Act. It is the contention of the petitioner's learned Advocate that where the Central Act and the State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable the Central Act will prevail and the State Act (W.B. Act 57 of 1980) will become void in view of repugnancy.

9. Learned advocate of the petitioner relies on a judgment of the Hon'ble Supreme Court reported in M. Karunanidhi Vs. Union of India and Another, .

10. I have gone through the said judgment. In my considered view the said judgment does not have any manner of application in the present case. After going through the parent Section 33-C(1) of the Industrial Disputes Act, 1947 and the amending provision of said Section 33-C(1) in Section 18 of the State Act, 1980, I am of the view that there can be no room for any argument that the State Act (W. B. Act 57 of 1980) was in any way repugnant to the Central Act. One of the important test to find out as to whether or not there is any repugnancy, is to ascertain the intention of the legislature in enacting such provision. Parent Section 33-C(1) of the Industrial Disputes Act, 1947 provides for recovery of money due from an employer. Such provision remains untouched in the State Act of 1980, by which certain amendment has been made for realisation of such money by way of a proceeding before the Chief Judicial

Magistrate or the Chief Metropolitan Magistrate instead of Collector. In view of the amending provision of the State Act the learned Magistrates as stated above are now empowered to realise the money in the manner as if it were a fine imposed by such Magistrate. Now, for realisation of such money the learned Magistrate concerned is to adopt the procedure laid down in Section 421(a) of the Code of Criminal Procedure.

11. In such circumstances, I am of the view that the procedure adopted in the present proceeding is the correct procedure and there is no illegality in such proceeding.

12. This is a proceeding of 2000. On number of occasions revisional applications were preferred before the Sessions Judge as also before this court, which took considerable time for final disposal. The poor workmen are suffering since 1998 and the petitioner/employer is dragging the matter by way of moving the higher forum at each and every stage to frustrate the orders passed by the higher courts and to cause harassment to the workmen. In my considered view such practice should never be encouraged by this court.

13. The revisional application accordingly fails and the same is dismissed.

14. The interim stay earlier granted by this court stands vacated.

15. Although direction was given earlier by this court to conclude the proceeding expeditiously, such direction could not be complied with by the learned Magistrate because of the reasons stated above. This is a proceeding pending before the learned Magistrate since 2000 and as such considering the mental agony and anxiety suffered by the workmen/opposite party Nos. 3 to 9 herein, I direct the learned Magistrate to conclude the proceeding as expeditiously as possible, preferably within a period of six (6) weeks from the date of communication of this order.

16. Criminal Section is directed to supply the certified copy of this order immediately to the opposite parties treating the matter as extremely urgent.