

(1968) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 369 of 1966

Central India Electric Supply Co. Ltd.

APPELLANT

Vs

Presiding Officer, District Labour Court and Others

RESPONDENT

Date of Decision : 16-07-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FF, 25FFF(1), 33C(1), 33C(2)
Madhya Pradesh Industrial Disputes Rules, 1957 — Rule 62

Citation : AIR 1969 MP 196 : (1969) 18 FLR 22 : (1972) ILR (MP) 431 : (1968) JLJ 1095 : (1969) 1 LLJ 840 : (1968) 13 MPLJ 798

Hon'ble Judges : P.V. Dixit, C.J.; G.P. Singh, J

Bench : Division Bench

Advocate : S.C. Dubey and B.S. Bakshi, for the Appellant; Gulab Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Singh, J.

This petition by the Central India Electric Supply Co. Ltd. under Articles 226 and 227 of the Constitution is directed against an order of the Labour Court Jabalpur passed on 28th April 1966 by which 96 workmen of the company who are impleaded in this petition as respondents 2 to 97 have been awarded full retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947.

The company was a licensee under the Electricity Act 1910 for supplying electrical energy and ran a power house at Katni. On the expiration of the license this undertaking at Katni was purchased by the Madhya Pradesh State Electricity Board u/s 10 of the Electricity Act and all the assets were taken over with effect from 4th May 1964. The company thereafter terminated the services of the 96 workmen and paid them three months average pay as compensation under the proviso to Section 25FFF(1) of the Industrial Disputes Act. The workmen then made separate applications to the Labour Court Jabalpur u/s 33C(2) claiming full compensation u/s 25F read with Section 25FF of the Act. These applications were

consolidated and were disposed of by a common order. According to the view taken by the Labour Court, there was no closure of undertaking within the meaning of Section 25FFF(1) attracting the proviso and the case was of transfer of undertaking by operation of law falling u/s 25FF enabling the workmen to claim full compensation u/s 25F.

The first contention raised on behalf of the petitioner is that under the Madhya Pradesh Industrial Disputes Rules an application even u/s 33C(2) of the Act has to be made to the Secretary to the Government of Madhya Pradesh in Labour Department and cannot be directly made to the Labour Court, and that as in the present case all the applications were made directly to the Labour Court they were not entertainable and should have been dismissed.

Reference in this connection is made to Rule 62 which reads as follows:--

"62. Application for recovery of dues:--An application u/s 33C shall be, in Form KK or KKK, as the case may be and shall be delivered, personally or forwarded by registered post in triplicate to the Secretary to the Government of Madhya Pradesh in Labour Department."

Section 33C is divided into five subsections out of which Sub-sections (1), (2) and (4) are material for the present discussion. They read as follows:--

"33-C. Recovery of money due from an employer;--

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapt. VA, the workman himself or any Other person authorised by him in writing in this behalf, or in the case of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government."

"(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in Subsection (1)."

It will appear that under Sub-section (1) an application is to be made to the appropriate Government and if the Government is satisfied about any money being due a certificate is issued to the Collector who recovers the amount as an arrear of land revenue. The proviso prescribes a period of limitation for an application under Sub-section (1) with a power to the Government to condone the delay on sufficient cause being shown for not making the application in time. Under Sub-section (2), which is wider in scope as compared to Sub-section (1), when any question arises as to the amount of money due or the amount at which any benefit, which is computable in terms of money, should be computed, the question is to be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

In contrast to Sub-section (1), Sub-section (2) does not provide that an application for claiming relief under that subsection should be made to the Government. Further, under Sub-section (1) it is for the Government to be satisfied that any money is due whereas under Subsection (2) it is for the Labour Court to decide the question as to the amount of money due or the amount at which any benefit should be computed and the function of the Government is merely to specify the Labour Court which is to have that jurisdiction. It is only after the question is decided by the Labour Court that the decision of the Labour Court is forwarded to the Government under Subsection (4), and the amount found due by the Court is recovered in the manner provided for in Sub-section (1). Again, there is no period of limitation prescribed for an application under Sub-section (2) whereas as already stated the proviso to Sub-section (1), provides for a period of limitation for applications under Sub-section (1).

Although not expressly stated, a reading of the section as a whole and a comparison of the language of Sub-sections (1) and (2) goes to show that an application for relief under Sub-section (2) is to be made to the Labour Court which has jurisdiction to decide the question. But the subsection is "subject to any rules that may be made under the Act" and it is still to be seen whether the rules provide that an application under Sub-section (2) should be made to the Government. We have already quoted the relevant Rule 62 which says that an application u/s 33C is to be made to the Secretary to the Government. The rule mentions Section 33C which prima facie includes both Sub-sections (1) and (2) but as the rule is silent as to what the Government is to do after receiving the application it is implicit that the rule refers only to applications under Sub-section (1) which under terms of that sub-section are to be disposed of by the Government. If the rule intended to include applications under Sub-section (2) it would have further provided that applications raising questions as to the amount of money due or as to the amount at which any benefit is to be computed will be forwarded for decision to the specified Labour Court.

Further the forms of applications KK and KKK prescribed by Rule 62 do not refer to the questions that arise for decision under Sub-section (2), and their language is more appropriate for Sub-section (1). Having regard to the distinction between Sub-sections (1) and (2) and the language used in Rule 62 we are of opinion that Rule 62 relates to applications u/s 33C(1) and does not relate to applications u/s 33C(2). We have already said that it is implicit u/s 33C(2) that applications for relief under that provision should be made to the specified Labour Court. We therefore, reject the argument that the workmen should have made the applications to the Secretary to the Government. In our opinion, the applications which were u/s 33C(2) were rightly made to the Labour Court.

It is then argued that as applications to the Labour Court were presented through an advocate and as advocates cannot appear as of right before the Labour Court the presentation was improper. It is true that the applications were initially presented through an advocate but on objection being taken to the appearance of the advocate, the workmen began to be represented by an officer of their registered trade union. Even if, we take that the applications were made on the date when the workmen began to be represented by an officer of their registered trade union, there is no difficulty for no limitation is provided for applications u/s 33C(2). Assuming that an advocate has no right to make applications in a Labour Court and the applications in the instant case should not have been filed by the advocate, it was merely an irregularity not affecting the merits and the order of the Labour Court is not now open to challenge on the ground of this irregularity as the proceedings became regularised when the workmen began to be represented by an officer of their trade union.

Next it is argued that Section 33C(2) is confined to claims in respect of any benefit which is capable of being computed in terms of money and not to what is *prima facie* money due. Reliance for this submission is placed on some obiter observations in *Bengal Nagpur Cotton Mills Ltd. Vs. State of Madhya Pradesh and Others*, . Those observations were, however, explained in *Surajmal Mehta Vs. Authority under Payment of Wages Act and Another*, and it was stated that they are not in accord with the view expressed by the Supreme Court in *Punjab National Bank Limited Vs. K. L. Kharbanda*, . In *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, the Supreme Court has summarised eight propositions regarding the scope of Section 33C(2) which are deducible from the earlier cases viz., *Punjab National Bank Limited Vs. K. L. Kharbanda*, ; *Central Bank of India v. Rajgopalan*, AIR 1964 SC 743 and *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, . The fourth proposition stated is as follows:

"(4) Section 33C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter VA of the Act already calculated and ascertained and therefore, there is no dispute about its computation. But Sub-section (2) applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation."

Indeed, the matter is put beyond any doubt by Section 33C(2) in its new shape as substituted by Act 36 of 1964. The new section, which has already been quoted in Sub-section (2) in plain terms refers to claims for "any money or any benefit which is capable of being computed in terms of money" and to questions arising "as to the amount of money due or as to the amount at which such benefit should be computed." In our opinion the question as to the amount of retrenchment compensation payable u/s 25F fell within the jurisdiction of the Labour Court u/s 33C(2).

Lastly it is contended that the Labour Court was in error in holding that the case was not of closure of undertaking governed by Section 25FFF(1) and the proviso appended to it. It may be recalled that the power house at Katni which was previously run by the petitioner company has not closed down. It has been taken over by the Madhya Pradesh Electricity Board on expiration of the petitioner's license and is now being run by the Board. Section 25FFF(1) and the proviso apply where an undertaking "is closed down" and as in the instant case the undertaking has merely changed hands but is still running it cannot be said that the case falls u/s 25FFF(1) or the proviso. This question is fully covered by the decision of the Supreme Court in *Workmen of U. P. State Electricity Board v. U. G. V. Electric Supply Co.* 1966 1 Lab LJ 730 (SC) where in almost identical circumstances it was held that there was no closing down of undertaking to attract the operation of Section 25FFF(1) and the proviso. The workmen were retrenched by the petitioner company and were rightly held entitled to compensation u/s 25F.

The petition fails and is dismissed with costs. The outstanding amount of security will be refunded to the petitioner. Counsel's fee Rs. 150 if certified.