

(2018) 10 BOM CK 0190
In the Bombay High Court
Case No : Writ Petition No.367 Of 2018

Chowgule Industries Private Ltd

APPELLANT

Vs

Commissioner-Labour & Employment Having his office at
Shramshakti Bhavan, 2nd floor, Patto Plaza, Panaji, Goa

RESPONDENT

Date of Decision : 29-10-2018

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10(1), 19(3), 19(6), 29, 33(1), 33(C), 33(C)(1), 33(C)(2)

Citation : (2018) 10 BOM CK 0190

Hon'ble Judges : Nutan D. Sardesai, J

Bench : Single Bench

Advocate : Atul Damle, R. Kinnerkar, P. Talaulikar, Amogh Prabhudessai, Shivraj Gaonkar

Final Decision : Dismissed

Judgement

1. Rule. Heard forthwith with the consent of the learned Counsels appearing for the parties. Learned Counsels appearing for the parties waive

service.

2. This Writ Petition seeks to invoke the jurisdiction of this Court under Article 227 of the Constitution of India to quash the order dated 03/01/2018

and the Recovery Certificates dated 18/08/2017, 21/09/2017 and 13/12/2017 issued by the respondent no.1.

3. It was the case of the petitioners that there were two issues concerning its employees which culminated in two different awards one regarding the

Variable Dearness Allowance and the other regarding the Charter of Demands.

The Tribunal had heard the parties on the first issue and made an award dated 08/07/2015 allowing the reference which was challenged by the

petitioners in the Writ Petition No.738/2015. The said petition came to be dismissed on 18/12/2015 which was challenged before the Hon'ble Supreme Court and when an order was made dismissing the Special Leave Petition keeping the question of law open and considering that there were only five workmen covered by the impugned judgment. The Tribunal had also made an award on hearing the parties dated 13/07/2015 in respect of the reference qua the Charter of Demands which was challenged by the petitioners in the Writ Petition No.739/2015. This petition came to be dismissed on 18/12/2015 and on challenge before the Hon'ble Apex Court in a Special Leave Petition, the same was accordingly dismissed. The petitioners thereafter in compliance with the orders of the Supreme Court proceeded to comply with the same and paid the amount due to all the employees concerned in the reference involving the Charter of Demands. The office of the respondent no.1 however issued a letter to them for the alleged non-implementation of the award and when they informed the respondent no.1 that the matter was pending before the Hon'ble Supreme Court, despite this position, the respondent no.1 proceeded with the filing of the criminal complaint for the alleged non-implementation of the award before the Judicial Magistrate First Class under Section 29 of the Industrial Disputes Act, 1947, the Act for short hereinafter.

4. It was the petitioners' case that despite the implementation of both the awards, the respondent no.1 proceeded to issue the Recovery Certificate dated 18/08/2017 informing that an amount of ₹ 68,52,256/- was due in respect of the respondents no.39 to 51. They were informed that the respondent no.1 had proceeded ex-parte as the petitioners had remained absent even though their representatives were present earlier on many occasions. Similar notices were issued in respect of the other 11 employees and a Notice of Demand dated 21/09/2017 was issued enclosing the Recovery Certificates. The petitioners were shocked and surprised to receive the Notice of Demand from the respondent no.2 alongwith the Recovery Notices issued by the respondent no.1 and addressed the letter dated 03/10/2017 stating that the notices under Section 33(C)(1) were ex-facie arbitrary, illegal and bad in law. Besides, the award had been implemented and undue haste was shown by the respondent no.1. The respondent no.1 was requested to recall the Recovery Notices, to give an opportunity to the petitioners to defend themselves or in the alternative to refer the

matter to the Labour Court under Section 33(C) of the Act. The petitioners received another letter dated 13/12/2017 from the respondent no.2 seeking to proceed to recover the dues and followed by the letter dated 03/01/2018 directing the petitioners to pay the total sum of ₹ 1,46,12,916/-. The petitioners were therefore entitled to an order to consider the legality, validity and propriety of the orders dated 03/01/2018, 13/12/2017, 21/09/2017 and Recovery Certificate dated 18/08/2017 and to quash and set aside the same.

5. Heard Shri Atul Damle, learned Senior Counsel with Shri R. Kinnerkar and Shri P. Talaulikar, learned Advocates on behalf of the petitioners who

submitted that there was no dispute that the first award came to be passed on 08/07/2015 involving 14 workmen which was confirmed by the Hon'ble

Apex Court by its order dated 01/07/2016. The second award in respect of the Charter of Demands was dated 13/07/2015 which was partly allowed

and attained finality on the dismissal of their petition by the Hon'ble Apex Court. The petitioners had made the payments of which there were receipts

evidencing the payments thereof. An application was moved by the Union under Section 33(C)(1) of the Act to which they had filed their reply clearly

indicating that they had adhered to the awards and made the payments. Yet a Notice of Demand was issued dated 21/09/2017 followed by the

Recovery Certificate dated 18/08/2017. They had made an application for the recall of the order nonetheless the respondent no.2 had issued the notice

dated 03/01/2018 calling upon the petitioners to pay the dues in all the cases following which action would be taken against them.

6. It was his contention that the said notice was being challenged as no proper calculation was placed on record in respect of the workmen and such

recovery was ex-parte. He next referred to the annexure R-1 relied upon on behalf of the respondents no.3 to 52 alongwith their calculations and

submitted that the respondents no.3 to 25 did not fall in the category specified in the award on the Charter of Demands. He also pointed out to the

other respondents namely 26 to 36, 37, 38 and 39 to 52 vis-a-vis their designation and submitted that they were not entitled to claim under the award.

He placed reliance in Parekh and Company V/s. S.M. Valvi, Assistant Commissioner of Labour & Ors. [2003 III CLR 342].

7. Shri S. Gaonkar, learned Advocate on behalf of the respondents no.3 to 52 adverted to the Recovery Certificate Exhibit 132 and submitted that a

bare reading thereof showed that sufficient notice was given to the petitioners before such certificate came to be issued by the respondent no.1. He

placed reliance in Board of Directors, Himachal Pradesh Transport Corporation & Anr. V/s. K.C. Rahi [(2008) 11 SCC 502 a]nd submitted that the

plea of violation of the principles of natural justice was not at all available to the petitioners and as it was apparent that ample opportunities were given

on a bare reading of the Recovery Certificate. He next referred to the scope of Section 33(C)(1) of the Act and submitted that the application was

made by the Union in the prescribed Form K-1 and therefore there was no requirement to give any details and there was substantial compliance on

their behalf unlike the contention on behalf of the petitioners that the application did not give the breakup of the amounts due to each of the workmen.

He placed reliance in Fabril Gasosa V/s. Labour Commissioner & Ors. [(1997) 3 SCC 150], Parekh & Co. V/s. S.M. Valvi & Ors. [(2003) 4 Mh.L.J.

903], adverted to the award on the Charter of Demands vis-a-vis the affidavit filed on behalf of the petitioners and further placed reliance in the

Chowgule Industries Pvt. Ltd. V/s. Shri Sakharam Gad & Ors. [Writ Petition No.738 & 739/2015]. He also referred to the definition of the expression

â??gradeâ? and â??designationâ? to meet the contention on behalf of the petitioners. A reference was further made to Section 19 sub-section (3) of

the Act and sub-section (6) in particular dealing with the non-obstante clause before placing further reliance in Dwarka Nath V/s. Income Tax

Officer, Special Circle, D-ward, Kanpur & Anr. [(1965) 3 SCR 536].

8. Shri P. Talaulikar, learned Advocate for the petitioners in reply submitted that a bare perusal of the roznama of the proceedings before the

respondent no.1 would reveal that there was no notice to the petitioners and therefore the orders passed by the respondent no.1 were in violation of

the principles of natural justice. It was a fit case to remand the matter and as this Court would not go into the disputed question. He placed further

reliance in Parekh & Company (supra) and submitted that the petitioners were always ready to make the payments legitimately due to the

respondents. The petition had therefore to be allowed and the impugned orders quashed and set aside. Shri P. Talaulikar placed further reliance in

D.S. Gupta Contracts (P) Ltd. V/s. Labour Commissioner, Government of N.C.T. [1998 I CLR 702].

9. i would consider the submissions of Shri A. Damle, learned Senior Counsel with Shri P. Talaulikar, learned Advocate on behalf of the petitioners,

those of Shri S. Gaonkar, learned Advocate for the respondents no.3 to 52 apart from the judgments relied upon by both and the relevant provisions of

the Act and decide the petition appropriately.

10. Undisputably there was a reference regarding the Variable Dearness Allowance which was decided by the Tribunal in favour of the the

respondents no. 3 to 52 and the petition filed by the petitioners before this Court and the Hon'ble Apex Court came to be dismissed bringing a finality

to the said award. It is equally an admitted position that in respect of the other reference, relating to the Charter of Demands, the Industrial Tribunal

had decided the same in favour of the respondents and the challenge offered by the petitioners to the same in the Writ Petition before this Court and

the Apex Court was dismissed, again bringing about a finality to the award of the Tribunal. The award on the Charter of Demands refers to

the grade and the scales corresponding thereto unlike the annexure R-1 to the Calculation Sheet produced on behalf of

the respondents which show the designation of the respondents distinct and different from those contained in the charter part of the award dated

13/07/2015. 'Grade' as defined in English means a particular level of ranking, quality, proficiency or value unlike the 'designation' which means the

action of choosing someone to hold an office or position thereby indicating that 'grade' and 'designation' are not synonymous. Section 33(C) of the Act

deals with the recovery of money due from an employer and sub-section (1) reads thus :

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-

B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death 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 workman from the employer.

11. In terms of the Rules under the Act, the application has to be made by the concerned person or the Union as the case may be in Form K-1 and with an annexure indicating the details of the amounts claimed. A cursory perusal of the application so made on behalf of the respondents would reveal that the respondents had made the application in the prescribed Form alongwith an annexure giving the details of the amounts due to each of them and the total amount being ₹ 68,58,256/- as provided for in the Notice of Demand. Therefore, it cannot be heard on behalf of the petitioners that the Notice of Demand did not indicate the amounts individually due to each of the respondents when the notice was issued in the prescribed Form K-1 and giving the details of the amounts in the accompanying annexure. Therefore, the contention on behalf of the petitioners that the persons in the annexure R-1 and the other employees did not fall in the categories specified in the list and thus not entitled to claim under the award is not tenable, the difference sought to be made between the grade and designation, notwithstanding.

12. Parekh & Company (supra), on which reference was placed by the petitioners as well as the respondents challenged the order passed under Section 33(1) of the Act and the Certificate of Recovery pursuant thereto. The first ground of challenge related to the non-consideration of the issue of non-maintainability of the application under Section 33(1) as it was filed on 04/07/2001 in relation to the execution of the award passed in 1993 and clarified in 1996. The second ground of challenge related to the failure of the authority to consider the objection to the maintainability of the proceedings under Section 33(1) of the Act in view of the bonafide dispute as regards the entitlement of the workmen to the amount claimed as due and payable to them under the said application while the third ground challenged related to the absence of power to the concerned officer to pass the impugned order on the day on which it was passed. Reliance was placed in *Fabril Gasosa & Anr. V/s. Labour Commissioner & Anr.* [1997 (I) CLR 589] contending that the objections which were sought to be raised were merely in relation to the calculations in respect of the amount due and payable under the award and therefore, the Assistant Labour Commissioner had jurisdiction under Section 33(1) of the Act to deal with same and

that there were no other objections raised by the petitioner.

13. In *Parekh & Company (supra)*, a learned Single Judge of this Court while dealing with the grounds of challenge observed at paragraphs 5,6,7,9 &

11 reproduced below and ultimately held that the impugned order did not disclose any application of mind to the objections raised by the petitioner in

relation to the calculations submitted by the concerned respondents and therefore the impugned order could not be sustained and was liable to be set

aside and the matter remanded.

5. In fact the said Act clearly empowers the authority to entertain such application even after the expiry of the period of one year.

Undoubtedly while entertaining such application, the authority must be satisfied about the fact that the applicant has sufficient cause for not making the

application within the period of one year. As the law prescribes specific period of limitation for entertaining the application under Section 33(C)(1) of

the said Act and a discretion has been given to the authority to entertain such application even beyond such period, but subject to satisfaction about the

sufficient cause for the applicant for not making the application within prescribed period, needless to say that such discretion has to be exercised

judicially by the authority. When the authority is expected to exercise its discretion judicially, it has necessarily to apply its mind to the materials placed

on record disclosing the sufficient cause for not filing such application within the specified period. Obviously, therefore, it, would be obligatory upon the

applicant to place on record sufficient materials which can disclose sufficient cause for the delay in filing such application. In the absence of statutory

provision in that regard, such materials need not necessarily be in the form of application for condonation of delay but even in some other form

including mere affidavit or some other material which can satisfy the authority about the sufficiency of cause for delay in approaching the authority

under Section 33(C)(1) of the said Act. However, the authority is expected to disclose the exercise done by the authority to ascertain as to whether

sufficient cause is disclosed by the applicant or not in the order to be passed while entertaining such application under Section 33(C)(1) of the said

Act. In other words, the fact that the authority has applied its mind to the materials disclosed by the applicant, must be revealed from the order on the

face of it. In case the order fails to reveal such exercise by the authority, then it

cannot be sought to be explained by way of an affidavit.

6. In the circumstances, therefore, the petitioner is justified in contending that the authority below has passed the impugned order without application of mind to the issue of limitation and without ascertaining as to whether the respondent No. 3 had disclosed sufficient cause for delay in approaching the authority under the said provisions of law.

7. As regards the second ground of challenge which relates to non consideration of the objections raised by the petitioner, the contention of the learned

Advocate for the petitioner is that the authority has passed the order merely on the basis of the claim put-forth by the respondent No. 3 totally ignoring

the objections which were raised by the petitioner. Whereas according to the respondent the authorities have duly considered the objections, and bare

reading of the impugned order reveals that the authority has applied its mind to the objections sought to be raised on behalf of the petitioner.

Undoubtedly, though the learned Advocate for the petitioner submitted that the petitioner had raised various objections to the application filed by the

respondent No. 3, as rightly submitted by the learned Advocate for the respondent, all those objections were in relation to the calculations of the

amount due under the award and not relating to any other matter. Perusal of the copy of the objections filed before the authority apparently reveals

that there is admission on the part of the petitioner that there is some amount still due to the workmen but the calculations placed on record by the

respondent No. 3 in respect of those dues were not correct. At the same time, the impugned order nowhere discloses any consideration of even such

objection by the petitioner. It is true that in the reply to the notice pursuant to the application filed by the respondent No. 3, the petitioner had submitted

that the application under Section 33(C) of the said Act was not maintainable and the respondents were required to approach under Section 33(2)(C)

of the Act for determination of the amount of arrears arising out of the award. However, in this regard the law is well settled pursuant to the decision

of the Apex Court relied upon by the learned Advocate for the respondents.

9. The Apex Court therefore, has clearly held that whether the amount due to the workmen flowing from the obligations under the settlement is

predetermined or ascertained or can be arrived at by any mathematical calculation or simpliciter verification and the only enquiry that is required to be

made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33(C)(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. The law on the point in issue being well settled by the decision of the Apex Court, there is hardly any room to entertain objection on the part of the petitioner that in spite of the award having been passed and further explained, the Union could not have filed application for recovery of the amount in terms of the award. Undoubtedly if any other objection was to be raised, the same could not been adjudicated upon by the authority while dealing proceedings under Section 33C(1) of the said Act. However, that would not preclude the authority from giving effect to the award or settlement as to calculation of the amount payable in terms of award. The Apex Court in that regard has held that even an enquiry can be held by the authority. Needless to say that enquiry has to relate only to the issue of mathematical calculation in respect of amount due in terms of the award.

11. The petitioner, however, is justified in contending that the impugned order nowhere discloses any application of mind by the authority even to the objections raised by the petitioner in relation to the calculation of the amount due under the award. It is true that the Assistant Labour Commissioner in his affidavit dated 20-1-2003 has stated that he has taken into consideration the calculations submitted to the authorities and order has been passed in accordance with the provisions of law. The fact that the authority has considered the objections, as already observed above, must be disclosed from the order itself. Since the impugned order does not disclose any application of mind to the objections raised by the petitioner in relation to the calculations submitted by the respondent, the impugned order cannot be sustained and is liable to be set aside.â??

14. In Board of Directors (supra), a two Judge Bench of the Apex Court held that the principles of natural justice cannot be put in a straightjacket formula. Their application depends on the facts and circumstances of each case. To sustain the plea of natural justice, it must be established that the aggrieved party has been prejudiced. The respondent himself abstaining from the departmental inquiry, though evidence showed that he knew about it, the plea of natural justice was deemed to have been waived and the respondent estopped from raising it.

15. In *Fabril Gasosa* (supra), a settlement was arrived at between the appellants and the employees' union relating to the service conditions of the workmen for the period between 01/04/1986 to 30/06/1988, which inter alia provided that the VDA (variable dearness allowance) shall be paid at $\square$ 2 per point of rise per month beyond CICPI 450 and the wages of the employees were linked with the VDA. The employees' union issued a notice of its intention to terminate the settlement with a view to submit a fresh charter of demands on 01/07/1988 which was submitted on 17/07/1988 by the employees' union demanding an increase in the salary etc. but it was mentioned therein that the service conditions in force would continue to remain unchanged unless specifically agreed to otherwise. The employees' union did not seek any change in the charter of demands insofar as the rate of VDA was concerned. No fresh settlement appeared to have been arrived at between the parties but the appellants relying upon the notice of termination and the new charter of demands, unilaterally froze VDA with effect from 04/08/1988. Negotiations between the employees' union and the appellants, did not, however, produce any fresh settlement.

16. In *Fabril Gasosa* (supra), the employees' union (respondent no.3) issued a demand notice to the employer on 21/01/1991 demanding VDA with effect from 01/07/1988 claiming that the unilateral freezing of the VDA was illegal and that the obligation in the settlement dated 09/12/1986 were in force and binding on the parties. The employees' union, it appears apart from filing an application before the authorities under the Payment of Wages Act alleging illegal deduction from wages, also approached the State Government for issuance of the recovery certificate for the arrears of VDA. The Labour Commissioner, on behalf of the State Government, issued a notice to the appellants on the application filed by the employees' union with regard to the payment of VDA on 14/05/1991. The appellants were required by the Labour Commissioner to reply to the claims of the respondent-union. The appellants took the stand in their reply that the settlement of 1986 stood terminated and referred to the letter of the employees' union dated 01/07/1988 conveying their intention to terminate the settlement and the fresh charter of demands.

17. In *Fabril Gasosa* (supra), the appellants further resisted the claim of the union inter alia by taking the plea that there was an oral agreement arrived

at between the parties to freeze the VDA at June 1988 point and therefore the claim of the employees' union was untenable. The appellants, however, produced no evidence in support of their plea of oral agreement. The Labour Commissioner found that no oral agreement had been proved and that the obligation of the employer to pay the VDA under the 1986 agreement continued to be in force and with a view to ensure implementation of the settlement, a notice of demand was issued to the appellants by the Labour Commissioner for payment of the VDA to the workmen. Coercive process was also initiated for recovery of the amount due as arrears of VDA between 01/07/1988 to 28/02/1991.

18. Fabril Gasosa (supra), filed the Writ Petitions in the High Court of Bombay challenging the notices dated 13/09/1991 and 27/12/1991 and certain other notices and proceedings taken by the Labour Commissioner in connection with the claim of the workmen regarding payment of the VDA. The main plea raised by the appellants in the Writ Petitions was that the settlement dated 09/12/1986 was time-bound till 30/06/1988 and since it was sought to be terminated by the Union through their notice dated 01/07/1988, the employees' union could not maintain any application under Section 33(C)(1) of the Act. Besides, an oral agreement between the parties which had varied the terms of the settlement particularly to freeze the VDA after the expiry of the time-bound settlement dated 09/12/1986 was also pleaded and it was canvassed that the employees' union could take recourse to seeking a reference under Section 10(1) of the Act or to file an application under Section 33(C)(2) of the Act but not to the provisions of Section 33(C)(1) of the Act. It was asserted that a settlement arrived at under the provisions of the Industrial Disputes Act ceases to be a settlement as defined under the Act on its termination and turns itself into a mere contract between the parties and, therefore, on termination of such settlement, the rights recognised by the settlement cannot be enforced in the manner prescribed under Section 33(C)(1) of the Act but only as contractual obligations.

19. In Fabril Gasosa (supra), the learned Single Judge rejected the plea that there had been an oral agreement between the parties which had in turn varied the terms of the settlement and found that the terms and conditions of the settlement of 1986 were subsisting between the parties inspite of the time-bound settlement and as such no fault could be found with the exercise of jurisdiction by the Labour Commissioner under Section 33(C)(1) of the

Act. The learned Single Judge also rejected the argument that in the facts and circumstances of the case, the employees' union could only prefer a claim either under Section 33(C)(2) of the Act or seek a reference under Section 10(1) of the Act for recovery of the arrears of VDA. It was held that the application filed by the employees' union under Section 33(C)(1) was maintainable and the obligations flowing from the settlement regarding payment of VDA could be enforced under the provisions of Section 33(C)(1) of the Act and that those obligations flowing from the 1986 settlement were not contractual in nature. The writ petitions were accordingly dismissed on 18/07/1994. The letter patent appeals filed before the Division Bench also failed giving rise to the appeals by Special Leave where again the same grounds were urged on behalf of the appellants.

20. In *Fabril Gasosa* (supra), the Apex Court while dealing with the second submission observed at paras 15, 18 and 19 as below and ultimately held that there was no merit in the appeal and dismissed the same.

15. Coming now to the second submission of the learned counsel for the appellants regarding the maintainability of the application under Section 33-C(1) of the Act, according to the learned counsel for the appellants, the obligations which flow from the 1986 settlement, after the expiry of the period of settlement, could be examined only through a reference under Section 10(1) of the Act or by the labour court under Section 33-C(2) of the Act and recourse to the provisions of Section 33-C(1) of the Act was not permissible. According to the learned counsel for the respondent on the other hand, the claim for money due, which only was required to be calculated and not determined, could be made under Section 33-C(1) of the Act and the workmen were not obliged to take recourse to either Section 10(1) or Section 33-C(2) of the Act.

18. That the rate of VDA had been agreed to and provided for in the 1986 settlement is not in dispute. It is also not in dispute that the claim petition filed by the employees' union under Section 33-C(1) of the Act was for the recovery of the VDA at the rate agreed to between the parties as per the terms of the 1986 settlement for the period for which the same had been withheld by the employer. Thus, both the rate of VDA and the period for which it was payable were not in dispute. Could the employees' union, therefore, not maintain an application under Section 33-C(1) of the Act for the

recovery of the VDA arrears?

19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature

has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being

computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section

(2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-

section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee

or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that

satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined

one and requires no adjudication.

The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can

only be done by the labour court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the

labour court under sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure

provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-

section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law.

An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the

former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of

Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is

capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is

predetermined and ascertained or can be arrived at by any arithmetical

calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due.

After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

21. In D.S. Gupta Contracts (P) Ltd. (supra), a learned Single Judge of the Delhi High Court as His Lordship then was held while interpreting Section 33(C)(1) of the Act that two conditions had to be satisfied before issuing the Recovery Certificate namely that the settlement was valid and enforceable and that the amounts claimed by each of the workmen were due to him under the said settlement. In the case at large before him, the Government did not arrive at any such satisfaction. Hence the conditions for exercise of the power of the Government under Section 33(C)(1) of the Act did not exist and the Recovery Certificate was issued without jurisdiction and accordingly the Recovery Certificate was set aside and the Government directed to reconsider the application of the workmen in accordance with law.

22. The contention of Shri P. Talaulikar, learned Advocate for the petitioners who carried forward the arguments on behalf of the petitioners that a perusal of the roznama dated 20/01/2017 till 16/03/2017 would indicate that no notice was issued to the petitioners too would not stand the test of

scrutiny. The petitioners were duly served with the notice but had not participated in the proceedings and therefore it is not available to the petitioners to canvass that there was a violation of the principles of natural justice and insisting an remand of the matter to the Trial Court on the specious premise that this Court could not go into the disputed questions. The petitioners at the cost of repetition had exhausted their remedy of challenging the judgment of the Tribunal before this Court and also before the Hon'ble Apex Court and which had attained finality and what was required to be done was to adhere to the terms thereof and make the payment to the respondents. The non-payment to the respondents had brought forth an action at the instance of the respondents under Section 33(C)(1) followed by a Notice of Demand and the Recovery Certificate. There is thus no scope for interfering therewith in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

23. In the result, i pass the following

O R D E R

(i) The Writ Petition stands dismissed.

(ii) Rule is discharged.