

(2018) 08 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 9011 , 9012 , 9013 Of 2017, 1821 , 7769 Of 2018

D.B. Corp. Ltd.

APPELLANT

Vs

state of Maharashtra , Through Labour Commissioner and
Ors.

RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17, 17(1), 17(2), 17(3)

Citation : (2018) 08 BOM CK 0063

Hon'ble Judges : S.C. GUPTE, J

Bench : Single Bench

Advocate : A.K. Jalisatgi, Pankaj Sutar, Vishwabhusan Kamble, Rajeshwar
Nawalpore, Jayakar & Partners, Pankaj Sutar, Vaishali Nimbalkar, S.P. Pandey,
H.S. Pandey

Final Decision : Dismissed

Judgement

1. This group of petitions concerns orders passed by Assistant Labour Commissioner, Mumbai City, in favour of working journalists and other

newspaper employees for recovery of their wages and arrears. These orders are
passed under Section 17(1) of the Working Journalists and Other

Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act,
1955 (Act 1955).

2. The petitions raise an important question concerning the authority and power
of the State Government or its delegate under Section 17(1) of the

Act, whenever an application of recovery of money due to a newspaper employee
is made. Considering that there are a number of petitions pending

before this Court, where a similar issue has been raised, the advocates and
parties appearing in person were given notice of a hearing to be held on

the issue by displaying a notice on the weekly boards. Accordingly, advocates and parties appearing in the matters have been duly heard and the petitions are being disposed of by this common order.

3. Before we consider the legal issue at hand, a few salient facts from one of the petitions, as a representative case, may be noted as follows:

Writ Petition No.1821 of 2018 is filed by one D.B. Corp. Ltd., which is a public company limited by shares engaged in multifarious businesses,

including radio, media (print and electronics), textile, real estate, etc. It has a newspaper division and publishes a newspaper called 'Dainik

Bhaskar' in Hindi. Respondent No.3 in this petition claims to be an employee of the Petitioner in the post of System Engineer in the newspaper

division, which publishes 'Dainik Bhaskar', though this fact is disputed by the Petitioner. It is the case of the Petitioner that Respondent No.3

was employed as a System Engineer mainly in administrative capacity for overall IT administration of the Petitioner at its Mumbai branch office.

On 19 September 2016, Respondent No.3 moved an application before Assistant Labour Commissioner, Mumbai City (Respondent No.2) under

Section 17(1) of the Act, claiming recovery of arrears of wages due to him under Majithia Wage Board Award recommending wages and

emoluments of working journalists and other newspaper employees, which has been accepted by Government of India. The application was

contested by the Petitioner.

In its reply, the Petitioner contended that Majithia Wage Board Recommendations and the notification dated 11 November 2011 issued by the Central

Government accepting them were not applicable in the case of Respondent No.3, presumably because he was not an employee of the newspaper

division but was working for overall IT administration of the Petitioner and he worked, besides, in an administrative capacity which did not qualify him

as an eligible employee under the Award. The Petitioner further claimed that the Applicant had given a declaration under para 20(J) of Majithia

Wage Board Recommendations that he was satisfied with the existing terms and conditions of his employment as well as benefits and privileges

enjoyed by him including his future prospects under the company and would like to be governed by the same and not by the Wage Board

Recommendations. The Petitioner also contested the dues purportedly claimed

by Respondent No.3 and put the Respondent to the strict proof thereof. The Petitioner, in the premises, contended that the Labour Commissioner did not have authority or power to issue any recovery certificate under Section 17(1) of the Act. By his impugned order dated 7 November 2017, the Labour Commissioner rejected the Petitioner's objections to the maintainability of the application and directed recovery of a sum of Rs.26,38,203.98 towards wages due to Respondent No.3 for the period between 11 November 2011 and 30 April 2016. This order has been challenged by the Petitioner in the present petition.

4. Section 17 of the Act, which provides for recovery of money due to a newspaper employee from his employer, is in the following terms:

17. Recovery of money due from an employer. (1) Where any amount is due under this Act to a newspaper employee from an employer, the

newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his

family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him,

and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue

a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own

motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or

under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect

in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the

Labour Court may be recovered in the manner provided in sub-section (1).

A plain reading of Section 17(1) clearly suggests that the Section provides for a machinery for recovery of money due under the Act to a newspaper

employee from his employer. Upon an application made to the State

Government for such recovery, if the State Government or such authority, as the State Government may specify in this behalf, is satisfied as to any amount so due, it issues a certificate for that amount to the Collector, whereupon the Collector proceeds to recover that amount in the same manner as arrears of land revenue.Â If any question arises as to the amount due to a newspaper employee from his employer, the State Government is empowered, either on its own motion or upon application made to it, to refer the question to any Labour Court constituted by it under the Industrial Disputes Act or any other corresponding law relating to investigation and settlement of industrial disputes in the State.Â The decision of the Labour Court on such reference is then forwarded to the State Government, which made the reference, whereupon the amount found due by the Labour Court may be recovered in the manner provided in subÂsection (1).Â This comprises of a complete code for recovery of money or a composite scheme whenever dues are claimed by a newspaper employee from his employer.Â SubÂsection (1) of Section 17 is in the nature of a mode of recovery, as the words â??without prejudice to any other mode of recoveryâ? used therein suggest.Â The State Government or its delegate issues a certificate in respect of â??amount dueâ? as a mode of recovery.Â In other words, subÂsection (1) contains procedure to recover the amount due and not for determination of the question as to what amount is due.Â If there is any dispute as to what amount is due, the State Government or its delegate has to make a reference under subÂsection (2) of Section 17.Â If, on a reference, the amount is determined, once again under subÂsection (3) of Section 17, the State or its delegate is empowered to issue a certificate referred to in subÂsection (1).Â Thus, nonÂexistence of a dispute concerning the amount or its prior determination are conditions precedent for invocation of Section 17(1) of the Act.Â So much is clear on principle.

5. There is also ample authority in support of this construction of Section 17, which we shall presently see. Originally, before its amendment by Act 65 of 1962, Section 17 provided as follows :

â??Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other

mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector and the collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

This provision came under scrutiny of the Supreme Court in the case of *Kasturi and Sons (Private) Ltd. vs. N. Salivateswara* A.I.R. 1958 S.C. 507.

That was a case where a journalist applied under Section 17 to the Labour Minister of the State of Bombay inter alia for recovery of remuneration

due to him from the proprietor of a daily newspaper called 'The Hindu' published from Madras, which was circulated in the then State of

Bombay. The applicant claimed to be a journalist supplying news to 'The Hindu' on a fixed monthly honorarium. He claimed that his

contract was wrongly terminated and arrears were due and payable to him towards the honorarium. In its written statement, the newspaper

disputed the claim. It raised a question of jurisdiction of the labour minister to go into the matters arising from the application. The journalist's case

was that under Section 17 of the Act any claim, which a newspaper employee may make against his employer, would fall to be determined on its

merits right from the start to the issue of the certificate under Section 17 (as it then stood). On the other hand, the petitioner before the court

claimed that the Section provided for a procedure to recover the amount due from an employer and not for determination and adjudication of the

amount. It was argued that the condition precedent for recovery to be ordered under Section 17 was prior determination by a competent authority

or court of the amount due to the employee from his employer and it is only if, and after, the amount so due is determined, the stage is reached for

recovery of the amount and it is at this stage that the employee is given an additional remedy under Section 17 without prejudice to any other mode of

recovery available to him. Thus, the argument was that the State Government was merely to hold a summary enquiry on a very narrow and limited

point. Within the scope of such enquiry, examination of, and decision on, the merits of the claim made by the employee are not included. This

construction of Section 17 was fully accepted by the Supreme Court. The Court

held that the construction suggested was more reasonable and more consistent with the scheme of the Act.

6. Section 17 was amended by Act 65 of 1962 with effect from 15 January 1963. The original provision was retained (with a certain modification)

as sub-section (1) and sub-sections (2) and (3) were added, as set out above. The construction of original Section 17 by the Supreme Court in

Kasturi's case, noticed above, has been further underscored by the legislature by enacting sub-sections (2) and (3). After addition of these two sub-

sections, it is no more open to debate that the State Government or its delegate has power to issue a certificate only if no question arises as to the

amount due. If there is any question or contest as to the amount due, it must be referred to a Labour Court constituted under the Industrial

Disputes Act or other corresponding law relating to investigation and settlement of industrial disputes. After the dispute so referred is adjudicated

upon by the Labour Court, the matter may go back to the State Government or its delegate for issuance of a recovery certificate.

7. Allahabad High Court and Gujarat High Court in the cases of Hindustan Media Ventures Ltd. vs. State of U.P. , Keshavlal M. Rao vs. State of

Gujarat³ and Devji Maganbhai Vacheta vs. D.B. Corp Ltd. have reiterated this position. The issues before the Court in these cases concerned

identity of the establishments as newspaper establishment and their particular categories under the relevant classification provided by the wage board

award, status of the claimants as newspaper employees, etc. The Courts held that these issues, by their very nature and character, would fall

outside the scope of limited powers of the State Government under Section 17(1) of the Act, under the law stated by the Supreme Court in Kasturi &

Sons' case.

8. Thus, on both principle and authority, the State Government's power under Section 17(1) is merely to issue a certificate of the "amount due", if

there is either no dispute as to the amount, which calls for a decision, or an already accomplished adjudication of such dispute. Several questions

may arise in an application for recovery. The Act itself provides for obligations of a newspaper establishment and corresponding entitlements of

newspaper employees. Question may arise as to the identity of the applicant as a newspaper employee or of the establishment as a newspaper

establishment.Â Wage boards are constituted under the Act for determination of wages and remuneration to working journalists and other newspaper employees.Â These awards provide for classification of newspaper establishments based on annual gross revenue or other criteria for the purposeÂ of determination of applicable wages.Â Since different slabs or levels of wages are provided for different categories of employees, questions of correct classification of the establishment or category of the employeeÂ applicant may arise for determination.Â These will have to be adjudicated by the Labour Court in a reference.Â These cannot be decided by the State Government or its delegate under Section 17(1).Â The satisfaction about the dues referred to in Section 17(1) is satisfaction aboutÂ nonÂ existence of any dispute or question as to the dues and not satisfaction about the correctness of the dues.Â Any question as to the correctness of the dues must be left to the Labour Court, to be decided in a reference, under Section 17(2).

Accordingly, the only conclusion that can be drawn from the scheme of Section 17 of the Act is that whenever a claim for recovery of amount due is contested by the employer newspaper establishment and adjudication or determination of the amount due is called for, the State Government or its delegate (in the present case, the Assistant Labour Commissioner) has to stay its hand and necessarily refer it to the Labour Court constituted under the Industrial Disputes Act and await an adjudication by that Court.Â It is only after such adjudication is made by that Court, that the State or its delegate will have power to issue a recovery certificate.

9. In the premises, the impugned orders passed in these petitions cannot survive.Â In each of these cases, the claim of the newspaper employee is contested either on the ground that the applicant is not a newspaper employee covered by the provisions of the ActÂ or the particular wage board award or that he has already issued a certificate under the particular provision of the wage board award preferring his existing service conditions, including wages and remuneration payable thereunder, over the provisions of the wage board award.Â Considering these disputes, which call for adjudication, the Assistant Labour Commissioner lacked authority or power to issue a recovery certificate without first having the matter referred to, and adjudicated by, the Labour Court.

10. Rule is made absolute accordingly in each of these petitions and the impugned orders of the Assistant Labour Commissioner are quashed and set aside.Â The Assistant Labour Commissioner is directed to refer each individual application to the Labour Court constituted under the Industrial Disputes Act for adjudication.Â In case any of the Petitioners has deposited any amount in pursuance of interim orders passed in the respective petitions, the amount shall be refunded by the Registry to the respective Petitioners.