

(1997) 09 DEL CK 0019
In the Delhi High Court
Case No : CW No.337 of 1996

D.S. Gupta Contracts (P) Ltd.

APPELLANT

Vs

Labour Commissioner, Govt. of N.C.T.

RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:

Citation : (1997) 09 DEL CK 0019

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. Sanjay Goswami, for the Appellant; Mr. Anil Grover, Mr. Mukul Talwar and Ms. Saroj idawals, for the Respondent

Judgement

Cyriac Joseph, J.—In this writ petition notice was issued to the respondents to show cause as to why this petition be not admitted. Respondents 1 and 2 have filed a common reply/counter affidavit. A reply has been filed on behalf of respondent No. 3, 5, 27, 29, 30 and 32 to 40.

The petitioner has filed rejoinder.

Rule.

2. The petitioner is a private limited Company engaged in execution of sanitary, mechanical and engineering contracts, as contractors and consultants. The challenge in the writ petition is against the proceedings initiated by the Assistant Labour Commissioner, Government of National Capital Territory of Delhi against the petitioner u/s 33C(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and the order dated 20.11.1995 directing the recovery of Rs. 3,27,060/- to be paid to 36 workmen of the petitioner and the consequential proceedings initiated by respondent No. 4, District Collector, Tis Hazari, Delhi including the recovery order dated 15.12.1995. The said 36 workmen are imp leaded as respondent Nos.5 to 40 in the writ petition. Respondent No.3 is the trade Union representing the workmen.

3. The short question that arises for consideration is whether Annexure P1 order dated 20.11.1995 is legal and valid. Admittedly the impugned certificate order dated 20.11.1995 was issued by the Assistant Labour Commissioner under the provisions of Section 33C(1) of the Act. As per the impugned order the amount of Rs. 3,27,060/- is payable by the petitioner to the 36 workmen under a settlement dated 4.1.1994 (wrongly typed as 8.1.1994 in the English translation). Hence the Assistant Labour Commissioner could have passed the impugned order only after being satisfied that the amount claimed by the workmen was due under the said settlement dated 4.1.1994. The petitioner management had sent Annexure P-13 letter dated 22.9.1995 and Annexure P14 letter dated 18.10.1995 to the Assistant Labour Officer in response to the notice dated 8.9.1995 issued to the management regarding the claim of the workmen. It was specifically stated in those letters that the petitioner management had already terminated and cancelled the settlement dated 4.1.1994 and that the letter of termination was sent to the third respondent On 29.9.1994 and that the termination letter was duly received and acknowledged by the Trade Union representing the workmen. A copy of the said letter terminating the settlement was also enclosed with letter dated 29.9.1995 for reference and record. It was further stated that the termination of settlement u/s 19(2) of the Act was neither annulled nor quashed by any Labour Court/Tribunal or by any judicial authority whatsoever. It was also stated that the workmen could not claim any benefit under the terminated settlement unless the termination was quashed or annulled by some judicial authority having powers and jurisdiction for the same. It was further stated that most of the workmen claiming benefit were those persons who had either abandoned the employment or had been placed under suspension for serious and grave misconduct. It was also stated that majority of the workmen who were in the employment of the petitioner at the time of contracting the settlement were no more employees of the petitioner. Thus, the petitioner had disputed the existence of the settlement under which the claim was made by the workmen. There is nothing to indicate that respondent No. 1 or the Assistant Labour Commissioner considered this aspect and satisfied himself that the settlement dated 4.1.1994 continued to be in force and that there was no valid termination of the settlement. Similarly the petitioner had disputed the claim of the workmen on the ground that most of the workmen had either abandoned the employment or been placed under suspension and hence not entitled to the amounts mentioned in their statement of claims. On this aspect also there was no enquiry which led to the conclusion that the workmen were entitled to the amounts claimed notwithstanding the objections raised by the management. The impugned order Annexure P1 merely states that the sum of Rs. 3,27,060/- is payable to 36 workmen under a settlement dated 4.1.1994. It does not contain any reasons, findings or details. Even in the counter affidavit filed on behalf of respondents 1 and 2 it is not stated that the respondents or the officers under them had enquired into the alleged termination of the settlement or that on a proper consideration of the relevant facts they came to the conclusion that the settlement dated 4.1.1994 continued to be in force and that

the 36 workmen were entitled to the amounts claimed by them. Learned Counsel for respondents 1 and 2 placed for my perusal the relevant files relating to the case. It is seen from the files that the Assistant Labour Officer and the Deputy Labour Commissioner had proposed that keeping in view of the termination of the settlement and huge claim made by the workmen the Trade Union might be asked to fight the amount commuted from the Court in respect of each workman by filing an application u/s 33C(2) of the Act.

They had also pointed out that ALC (South) had not certified the validity of the settlement. However, the Labour Commissioner directed that a recovery certificate be issued for arrears of pay and D.A. subject to production of an affidavit by the Trade Union that settlement had not been terminated as yet and the amounts mentioned in the application filed u/s 33C(1) of the Act on account of arrears of pay and D.A. were correct. Thereupon the General Secretary of the Trade Union furnished an affidavit to the above effect and the impugned recovery certificate Annexure P1 was issued.

The above facts revealed by the relevant files placed for my perusal, support the contention of the petitioner that respondents did not conduct any proper enquiry regarding the validity and enforceability of the settlement dated 4.1.1994 or the admissibility of the claims made by the 36 workmen, though the petitioner had clearly stated before the Assistant Labour Officer that the settlement dated 4.1.1994 had been terminated and that the notice of termination had been duly served on the third respondent Union. The respondents issued the impugned recovery certificate solely on the basis of an affidavit of the General Secretary of the Union to the effect that the settlement had not been terminated and the amounts mentioned in the application filed u/s 33C(1) of the Act were correct. In this context it is useful to refer to Section 33C(1) of the Act which is extracted below:

"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 arrears 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."

It is clear that as per Section 33C(1) of the Act two conditions had to be satisfied before issuing the recovery certificate in this case. The first condition is that the settlement dated 4.1.1994 relied on by the workmen should be valid and enforceable. The second condition is that the amounts claimed by each of the workmen were due to him under the said settlement. Though the management contended that both the conditions were not satisfied, there was not any proper consideration of finding on both these aspects by the Government. As already pointed out the relevant files disclose that satisfaction of the Government regarding the enforceability of the award dated 4.1.1994 or the admissibility of the amounts claimed was not arrived at or recorded. Hence in this case the conditions for exercise of the power of the Government u/s 33C(1) of the Act did not exist. Therefore, the impugned recovery certificate Annexure P1 was issued without jurisdiction. The action of the respondents in issuing the impugned recovery certificate was arbitrary and it lacked proper application of mind. In these circumstances the impugned order/recovery certificate dated 20.11.1995 and all consequential steps taken by the respondents are liable to be set aside.

4. In *Fabril Gasosa Vs. Labour Commissioner and Others*, the Hon"ble Supreme Court considered the scope of the power the Government u/s 33C(1) of the Act and in paragraph 17 of the judgment it is stated as follows:

"Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section 33C(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 33C 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 of 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 u/s 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 u/s 33C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33C(1) and 33C(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 pre-determined and ascertained or can be arrived at by an arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings u/s 33C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C 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 VA and the Government, if satisfied, that a specific sum is due to the workman, 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 VA or VB and the period for which the arrears are claimed is also known, the case could be covered by sub-section (1) as only a calculation of the amount is required to be made."

According to the above judgment before issuing a recovery Certificate u/s 33C(1) of the Act the Government must arrive at the satisfaction that the amounts claimed by the workman are due and payable to the workman under a settlement or an award or under the provisions of Chapter VA or VB of the Act. In the present case the Government did not arrive at any such satisfaction. Respondents 1 and 2 have not recorded any satisfaction or finding on the question whether the settlement dated 4.1.1994 continued to be in force notwithstanding the notice of termination given by the management and whether any rights flowed from the said settlement as well as on the question whether the workmen had actually worked to claim the wages as most of them had allegedly abandoned employment or were under suspension. Hence the exercise of power u/s 33C(1) of the Act to issue the recovery certificate was not in accordance with the provisions of Section 33C(1) and hence illegal.

5. In Civil Writ Petition No.1264/95 - M/s. Calcom Plastics Private Limited Vs. The Lt. Governor & Others, a Division Bench of this Court had occasion to consider the interpretation of Section 33C(1) of the Act and the scope of power of the appropriate Government under that section. In the judgment dated 12th December, 1996 the learned Judges of the Division Bench summarised their conclusions as follows:

- (i) Proceedings u/s 33-C(1) of the Act are in the nature of execution proceedings.
- (ii) The appropriate Government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry.
- (iii) In case the management raises bona fide dispute/s on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate Government has no right of adjudication of such dispute/s.
- (iv) In case of bonafide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/ Industrial Tribunal.
- (v) The appropriate Government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or malafide taken with a view to deprive the workman of the money due to him.
- (vi) The appropriate Government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision u/s 33-C(1) and is also required to make a speaking order giving reasons so that the aggrieved party - management or workman may seek judicial review of the decision of the appropriate Government in accordance with law."

On examination of the present case in the light of the above mentioned principles formulated by the Division Bench of this Court, I find from the impugned order, the counter affidavit of respondents 1 and 2 and the relevant files, that though the management raised a dispute on the right of the workmen to make any claim under a settlement dated 4th, January, 1994 the Government did not consider whether the dispute was bona fide. Neither did the Government examine the objections of the management nor did the Government form a prima facie opinion that the objection was perverse, frivolous or mala fide taken with a view to deprive the workmen of the money due to them. While taking a decision on the application of the workmen the Government did not pass any speaking order giving reasons. Reasons for overruling the objections of the management were not recorded even in the file. Hence I am of the view that the impugned action of respondents 1 and 2 is clearly illegal and that the impugned orders are liable to be quashed. Respondents 1 and 2 are liable to be directed to re-examine the matter and to take a fresh decision in accordance with law and in the light of the principles stated in the judgment in Civil Writ Petition No. 1264/95, which have been extracted above.

7. For the reasons stated above the Rule is made absolute. The writ petition is allowed and the impugned recovery certificate issued by respondent No. 1 on 20.11.1995 is set aside. All steps taken pursuant to the impugned recovery

certificate also are set aside. I direct respondents 1 and 2 to reconsider the application of the workmen in accordance with law and in the light of the principles formulated by this Court in C.W.P. No. 1264/95 at the earliest. There will be no order as to costs.