
(1998) 08 OHC CK 0044
In the Orissa High Court
Case No : O.J.C. No. 3742 of 1997

Executive Engineer, Jeypore Electrical Division and Others	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 33C(2)

Citation : (1999) 2 LLJ 337

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.K. Nayak, J.K. Khuntia and S.S. Patra, for the Appellant;

Final Decision : Allowed

Judgement

Pasayat, J.—Order passed by the learned Presiding Officer, Labour Court, Jeypore, Koraput disposing of an application u/s 33C(2) of the Industrial Disputes Act, 1947 (in short the "Act") is under challenge.

2. Ghasiram Jena (opposite party No. 2) (hereinafter referred to as the "claimant") filed an application claiming benefit of unpaid wages and interest thereon from the petitioners stating that they were his employers.

3. Case of the claimant in essence was as follows:

In 1983 while the claimant was working as Clerk A in the office of the Executive Engineer, Bhawanipatna Electrical Division, Bhawanipatna, now renamed as Kalahandi West Electrical Division, Bhawanipatna, the Executive Engineer selected him for appointment as Junior Accountant and posted in the Headquarter office of Finance Wing at Bhubaneswar. The said appointment was duly communicated to the Superintending Engineer, Electrical Circle, Jeypore, and the Executive Engineer of Kalahandi West Electrical Division, Bhawanipatna relieved the claimant on December 21, 1983 in order to enable him to join the new post. The claimant filed a representation on December 21, 1983 to the Financial Adviser and Chief Accounts Officer of the Orissa State Electricity Board,

Bhubaneswar (in short, "OSEB") praying for extension of time to join the new assignment, and to permit him to stay at Bhawanipatna for his personal difficulties and to look after his ailing mother. Said representation was forwarded to the Superintending Engineer by the Executive Engineer, who in turn forwarded the same to the Financial Adviser and Chief Accounts Officer recommending for acceptance thereof. He instructed the concerned officials to allow the claimant to work till January 15, 1984. He further advised the Executive Engineer that in case of non-receipt of extension order from the Financial Adviser and the Chief Accounts Officer, the claimant would be relieved on January 16, 1984 unless he gives in writing that he would forego his promotional appointment. The instructions given by the Superintending Engineer were not carried out and the claimant was not permitted to join the appointment. Accordingly, he made a representation in writing on January 16, 1984 expressing his intention to forego the promotion in case he is not allowed to stay at Bhawanipatna for some time. After this the Superintending Engineer advised the concerned Executive Engineer to allow the claimant to join in his previous post on March 10, 1984. But the claimant was not allowed to join. Even though the Financial Adviser and the Chief Accounts Officer allowed the representation of the claimant allowing him till May 15, 1984 to join in the promotional post, he was not allowed to join in the post. An industrial dispute was raised before the Assistant Labour Commissioner, Jeypore and the District Labour Officer, Bhawanipatna on this issue. The concerned Executive Engineer was advised to take back the claimant to the job with full back wages. This was not carried out. The Superintending Engineer being the appointing authority instructed the concerned Executive Engineer in his letter dated May 7, 1984 to treat the period from December 22, 1983 to June 7, 1984 as on duty and pay the wages to claimant immediately. But this was not done. Hence an application was filed for computation and determination of unpaid wages during the disputed period from December 22, 1983 to June 7, 1984. An application was filed on May 2, 1995. The claim was resisted by the present petitioners. It was their specific stand that the claimant was already relieved, but he did not attend his duty for the period from December 22, 1983 to June 7, 1984, and was not entitled to claim wages during this period. A plea relating to maintainability of the application u/s 33C(2) was also raised. It was specifically urged that the claimant had been paid his T.A. and advance pay, and the question of paying him any wages did not arise. On receipt of letter of the Superintending Engineer an explanation was called for by the OSEB as to under what circumstances he had directed the Executive Engineer to relieve the transferred employee to enable him to join the new assignment, and to pay wages to the claimant when he actually had not attended his duties and was not eligible to get his wages. Pursuant to that the Superintending Engineer has submitted his explanation. Thereafter the OSEB did not proceed further after receiving the view of the Superintending Engineer.

The learned Presiding Officer came to hold that the claimant has existing rights to lay claim for the unpaid wages during the disputed period and was entitled to

receive the same which was computed and determined at Rs. 8368/-. The present petitioners were given the liberty to compute and determine the amount separately while making payment of the dues to the claimant.

4. Petitioners had challenged the order on the ground that the learned Presiding Officer has misconceived the scope and ambit of Section 33C(2) of the Act. The order is contradictory in terms inasmuch as while a computation has been made at the same time liberty has been given to the petitioners to make computation. Additionally, a stale claim was lodged more than a decade after the alleged period during which the cause of action is stated to have arisen. There is no appearance on behalf of the claimant in spite of service of notice.

5. Proceedings u/s 33C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an executing Court. Under Sub-section (2) of Section 33C 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 is to be decided by the Labour Court. This provision contemplates an enquiry into the existence of the right and such an enquiry is only incidental to the main determination which is to be made by the Labour Court. At this juncture it is necessary to take note of Section 33C(1) and Section 33C(2) which have relevance for this case. They read as follows:

"33C. 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 "Chapter V-A or Chapter V-B", (a) 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 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 under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government "within a period not exceeding three months".

Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Section 33C(2) is wider than Section 33C(1). In this connection the legislative intention disclosed by the language of these two sub-sections is fairly clear. Under Sub-section (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 the benefit should be computed, the question has to be decided by the Labour Court. The Labour Court may appoint a Commissioner to submit a report and the Commissioner can take evidence also. The decision of the Labour Court has to be sent to the Government and any amount found due has to be recovered as provided in Sub-section (1). This provision contemplates an enquiry into the existence of the right and such an enquiry is only incidental to the main determination which is to be made by the Labour Court. The interrelation between Sub-sections (1) and (2) has been examined by the Apex Court in several decisions. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, the Court noticed that Sub-section (2) does not contain the words of limitation as used in Sub-section (1) which deals with cases where any money is due under a settlement or an award or under the provision of Chapter V-A. Thus a claim made under Sub-section (1), by itself, could only be a claim referable to a settlement, award, or the relevant provisions of Chapter V-A. The three categories of claims mentioned in Section 33C(1) fall u/s 33C(2) and in that sense Section 33C(2) could itself be deemed to be a kind of execution proceeding but it is possible that claims, not based on settlement, awards or made under the provisions of Chapter V-A, might also be competent u/s 33C(2). The Court, however, refrained from indicating as to what additional cases would fall u/s 33C(2) which may not fall u/s 33C(1) and contended itself by saying that "the scope of Section 33C(2) is wider than Section 33C(1)". Clarifying its earlier observation in *Punjab National Bank Limited Vs. K. L. Kharbanda*, the Court said that the observations that Section 33C is a provision in the nature of execution, "should not be interpreted to mean that the scope of Section 33C(2) is exactly the same as Section 33C(1)". This was reiterated in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, Later, in *Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others*, a five-Judge Bench of the Court observed that the Section is divided into two parts. The first part deals with the recovery of "money due" to a workman under an award and the second part deals with a "benefit" computable in terms of money. Under Sub-section (1) the State Government (or its delegate), if satisfied that any money is due, is enabled to issue a certificate to the Collector who then proceeds to recover the amount as an arrear of land

revenue. The second part when speaks of a benefit computable in terms of money which benefit, after it is so computed by a Labour Court, is again recoverable in the same way as money due under the first part. The contrast between the words "money due" in the Sub-section (1) and "benefit" in Sub-section (2) was accentuated to demarcate the areas of operation of the two sub-sections. It was pointed out that:

"The contrast in the two sub-sections between "money due" under Sub-section (1) and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under Sub-section (2) shows that more arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of Sub-section (2). But the antithesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by Sub-section (2) but is one for the satisfaction of the State Government under Sub-section (1). It is verification of the claim to money within Sub-section (1) and not determination in terms of money of the value of a benefit."

In U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., the Court again stated the distinction between the two sub-sections as follows:

"The legislative intention disclosed by Sections 33C(1) and 33C(2) is fairly clear. u/s 33C(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, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Where the workman who is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may u/s 33C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33C(2) is wider than Section 33C(1). Matters which do not fall within the terms of Section 33C(1) may, if the workmen is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2)."

6. Section 33C is, as stated (supra), a proceeding in the nature of execution. Where the amount to be executed is to be worked out (for example in an award) or where it may be worked out without any dispute, Section 33C(1) will apply. But where the amount due to a workman is not stated in the award itself and there is a dispute as to its calculation, Sub-section (2) will apply and the workman would be entitled to apply thereunder to have the amount computed provided that he is entitled to a benefit, whether monetary or non-monetary, which is capable of being computed in terms of money. The Labour Court, which is called upon to compute in terms of money, the benefit claimed by a workman, is in such cases, in the position of an executing Court. Like the executing Court, the execution proceedings of the Labour Court are governed by the Code of Civil Procedure. In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, the Apex Court pointed out that in a suit a claim for relief

made by the plaintiff against the defendant involves an investigation directly to the determination of (i) the plaintiff's right to relief, (ii) the corresponding liability of the defendant, including whether the defendant is, at all, liable or not and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination referred to above, that is to say, the extent of defendant's liability, may sometime be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33C(2) is in the nature of an execution proceeding, it should follow that an investigation of the nature of determinations (i) and (ii) above is normally, outside its scope. Though, as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that scope. But that is merely incidental. To call determinations (i) and (ii) incidental to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions - say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as incidental to its main business of computation. In such cases, determinations (i) and (ii) are not incidental to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the proceeding which commences with a reference to the Industrial Tribunal.

7. The Labour Court u/s 33C(2) would also be competent to interpret the award of settlement on which the claim is based where there is a dispute as to the right thereunder or as to its correct interpretation. It would also be open to the Labour Court to consider the plea that the award sought to be enforced is a nullity as it cannot be gainsaid that if a decree to be executed is shown to be a nullity, the executing Court can refuse to execute it. In other words, if the Labour Court is satisfied that a direction in the award on which the workers' claim is based is without jurisdiction, it would be justified in refusing to implement it by rejecting the claim petition filed u/s 33C(2) of the Act. But the executing Court cannot go behind the decree nor can it add to or subtract from the provisions of the decree. These limitations also apply to the Labour Court. Hence in discharging its functions of executing orders or award, it must accept them as they stand. If the award is unambiguous, the Labour Court is bound to enforce it and under the guise of interpreting it, it cannot make a new award by adding to or subtracting anything therefrom. Although it cannot go behind the award, it is nevertheless competent to construe the award where it is ambiguous and to ascertain its precise meaning, for unless that is done, it cannot enforce the award when it is

called upon to do so by an application u/s 33C(2) of the Act. A claim u/s 33C(2) postulates that the determination of question, about computing in terms of money, may in some cases have to be preceded by an enquiry into the existence of the right. For the purpose of finding out existing right between the parties, the Labour Court may also interpret document and take evidence. Such an enquiry is incidental to the main determination assigned to the Labour Court by this Section. While inquiring into the question as to the existence of such a right and construing the award, the Labour Court can look into the demands by the workmen in order to ascertain whether the award under which the right is claimed was or was not beyond the scope of the demand; in other words, whether the award was within jurisdiction. The application of this principle has been illustrated in the decision of the Apex Court in *Voltas Ltd. Vs. J.M. Demello and Another*,). But under the guise of taking such a decision, the Labour Court cannot arrogate to itself the functions of an Industrial Tribunal which is entitled to adjudicate matters covered u/s 10(1) and to decide the rights of a workman or the existence of a liability on the part of the employer.

8. Judged in the background of aforesaid legal position, the award under challenge does not meet the requirements of law in the background of factual position highlighted above. In view of this conclusion, it is not necessary to examine the other plea that the claim was a stale one. That being the position, the award cannot be maintained and is set aside.

The writ application is allowed, but in the circumstances without any order as to costs.

S.C. Datta, J.

9. I agree.