
(1986) 09 KL CK 0014
In the High Court Of Kerala

Indian Tourism Development Corporation	APPELLANT
Vs	
Labour Court and Others	RESPONDENT

Date of Decision : 05-09-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33C, 36A

Citation : (1987) 1 ILR (Ker) 607 : (1987) 2 LLJ 190

Hon'ble Judges : Radhakrishna Menon, J

Bench : Single Bench

Judgement

Radhakrishna Menon, J.—The employer is before this court.

2. Ext. P1 is under challenge

3. The facts relevant and requisite to dispose of the issue arising for consideration in the O.P., briefly stated are:

4. Respondents 2 and 3 are workmen of M/s. Kovalam Ashok Beach Resort of Kovalam, a hotel run by the petitioner Corporation. The wages, dearness allowance and other conditions of employment of the workmen of the petitioner Corporation including the workmen of Kovalam Ashok Beach Resort, were governed by a long term settlement which expired on 30th June 1982. The trade unions representing the workmen including respondents 2 and 3, namely I.T.D.C. General Employees" Union, I.T.D.C. Employees" Union and I.T.D.C. General Employees" Association (representing the workmen of the Kovalam Ashok Beach Resort) submitted a charter of demands seeking revision of wages and also other conditions of service. These trade unions jointly pressed their charter of demands. As a result of the negotiations between the parties, a settlement was arrived at on 23rd April 1984 at New Delhi.

5. All the regular employees of Hotel Kovalam Ashok Beach Resort in the scale of pay of Rs. 600?1200 as existed at the relevant time are declared entitled to the benefits of the settlement aforesaid. The new scales of pay have been framed taking into account the norms indicated hereunder:

- (a) By adding a sum of Rs. 70/- at that rate from management side, and
- (b) another sum of Rs. 30/- taken out of fixed Dearness Allowance and merging the same in each of pre-revised scales.

The revised pay scale was scheduled to come into force with effect from 1st July 1982.

6. The Corporation implemented the settlement in respect of all employees including respondents 2 and 3. The basic pay of respondents 2 and 3 as on 1st July 1982 accordingly was fixed at Rs. 488/-. This was done by adding Rs. 100/- to their basic salary of Rs. 372/- as on 30th June 1982 and fitting the same into the nearest higher step in the new scale after adding one increment of Rs. 14/- in the new scale as contemplated by the settlement. These respondents, however were not satisfied with the fixation of their basic pay as on 1st July 1982 at Rs. 488/-. According to them, they are entitled to have their basic pay as on 1st July 1982 fixed at Rs. 502/-. As this demand was contrary to the settlement, the Corporation declined to accede to the said demand.

7. Thereupon respondents 2 and 3 filed a claim petition u/s 33C(2) of the Industrial Disputes Act, seeking computation of the amounts due to them as per the new settlement. They claimed that each one of them is entitled to arrears of salary to the tune of Rs. 1,743.95 for the period from 1st July 1982 to 30th October 1984.

8. The Corporation contested the claim and in support of the contest it pressed into service the various provisions of the settlement.

9. After considering the various aspects of the case, the first respondent has passed the impugned order. The Warned counsel for the petitioner submits that though respondents 2 and 3 claimed that their basic pay as on 1st July 1982 should be fixed at Rs. 502/- they have not produced any materials to sustain the said claim. They have not produced any evidence to show that as on 30th June 1982 they were drawing more than Rs. 372/- as basic salary. They have also not produced any document to show that as on 30th June 1982 they were eligible for drawing additional increment. In short, there is no material available on record to arrive at the conclusion that as on 1st July 19X2 respondents 2 and 3 were drawing a basic pay of Rs. 488/- as claimed by them.

10. On going through the records, I am of the opinion that the above argument of the learned Counsel for the petitioner is well founded.

11. In fact, the claim of respondents 2 and 3 is that their basic pay as on 1st July 1982 requires to be taken into account for fixing their pay in terms of the settlement. This claim, however, is not sustainable for the simple reason, that the parties to the agreement, that is the Corporation and the Trade Unions, have agreed that the revised scale of pay will be introduced only with effect from 1st July 1982. If that be the position, the basic pay that the workman was drawing as on 30th June 1982 alone will be relevant for determining the basic pay that

they will be entitled to draw from 1st July 1982 onwards. From the facts available on record, it is clear that the very approach made by the first respondent to the issue is erroneous. The first respondent has proceeded as if it is the basic pay drawn by the workmen as on 1st July 1982 that is required to be taken into account to fix the new scale of pay in terms of the settlement. No further discussion on this question is warranted because the parties to the settlement except respondents 2 and 3, have accepted in principle that the new scale of pay will be introduced with effect from 1st July 1982. Respondents 2 and 3 have no case that as on 30th June 1982 they have been drawing more than Rs. 372/- as basic salary. The claim of respondents 2 and 3 therefore is not sustainable.

12. Learned Counsel for the petitioner then submitted that since the claim petition is not maintainable in law, the same, for that reason alone, is liable to be dismissed. In support of this argument the learned Counsel highlighted the following aspects. u/s 33C(2), the Labour Court is given the power to execute or implement an award or settlement at the instance of a workman. The Labour Court in the exercise of that power therefore cannot interpret the terms of a settlement. The Labour Court, Tribunal or National Tribunal, as the case may be, in the discharge of the function u/s 36A, alone has the authority to interpret any provision of an award or settlement. The above position notwithstanding, the Labour Court, the learned Counsel submits, has interpreted the terms of the settlement, ignoring provisions contained in Section 36A I.D. Act, and given the verdict which is under challenge in this petition. To appreciate this argument, one should understand the contents of Section 33C(2) and Section 36A. These sections read:

33C(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 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.

36A:-Power to remove difficulties.?(1) If, in the opinion of the appropriate Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

Construing these sections, the Supreme Court in *The Central Bank of India Ltd.*

Vs. P.S. Rajagopalan etc., , has held thus:

But the scope of Section 36A is different from the scope of Section 33C(2), because Section 36A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of Section 33C(2). Whereas Section 33(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference u/s 36A.

13. It is true that the Labour Court in the exercise of power vested in it u/s 33C(2) is discharging the functions of an executing court and therefore is competent to interpret the settlement or the award on which the workman bases his claims. But the said power u/s 33C(2) does not empower the Labour Court to interpret the award or settlement where a dispute arises in that regard between the workman and the employer. It should in this context be remembered that the power given to the Labour Court u/s 33C(2) empowers the Labour Court to enable the workman to execute or implement his existing individual undisputed rights arising under an award or settlement. But where a dispute between the workman and the employer arises in regard to the interpretation of any provisions of the award or settlement, the said dispute can be resolved only by following the procedure prescribed u/s 36 A.

14. From the facts stated supra it is clear that there is no agreement between the employer and employee, regarding the interpretation of the relevant clauses of the settlement. If that be so, the submissions of the learned Counsel for the petitioner that the Labour Court erred in entertaining the petition of respondents 2 and 3 u/s 33C(2) requires to be upheld.

For the reasons stated above, the order under challenge is liable to be vacated. I accordingly quash Ext. PI. The O.P is allowed. No costs.