

(2007) 11 DEL CK 0126

In the Delhi High Court

Case No : Writ Petition (C) No. 21620 of 2005

Indraprastha Power Generation Company Ltd.

APPELLANT

Vs

Ishwari Devi and Another

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2), 33C(2), 36A

Citation : (2009) 99 DRJ 485

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; M.K. Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The petitioner management has filed the present writ petition being aggrieved by an order dated 19th January, 2005 passed

by the Labour Court on an application filed by the respondent workman u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as

"the Act").

2. The facts leading to the filing of the aforesaid application by the respondent workman are that on 11th August, 1973, an agreement of Wage

Revision was entered into by the petitioner management with its workers' union. However, certain points of dispute were referred for decision to

the Sole Arbitrator, Sh. G. Venkata Swamy on 18th October, 1973. The arbitrator gave an interim award on 24th October, 1973 which was

implemented by the petitioner management. The arbitrator gave his final award on 21st March, 1977 but the same was not implemented by the

petitioner management. As a result, the workers' union raised a dispute which

was referred to the Industrial Tribunal by the appropriate authority

vide order dated 17th February, 1978. The Industrial Tribunal passed an award dated 28th January, 1988 whereunder the award of the sole

arbitrator was confirmed and the petitioner was directed to implement the same.

3. Aggrieved by the aforesaid award, the petitioner management challenged the same by filing a writ petition, which was dismissed by the High

Court. The petitioner management assailed the aforesaid order of the High Court before the Supreme Court by filing an SLP which was also

dismissed on 20th September, 1988. Thus, the litigation pertaining to the award dated 28th January, 1988 attained finality. However, even

thereafter, the petitioner management did not implement the award and make payments of the salaries to the respondent workman.

4. In the meantime, in the year 1991, the respondent workman filed an application before the Labour Court u/s 33C(2) of the Act seeking

directions to the petitioner management to make payment towards arrears of pay with interest at the bank rate and revise the basic pay scale of the

respondent workman with effect from 1st November, 1991. During the pendency of the aforesaid proceedings, on 8th December, 2004, the

Labour Court was informed that the petitioner management had implemented the award in the year 1995 and wages which were refixed as per the

award had already been paid to the respondent workman. Thus, it was stated on behalf of the petitioner management that nothing further survived

in the writ petition. It was also stated that the claim for payment of interest could not be made by the respondent workman as the jurisdiction of the

Labour Court while exercising powers u/s 33C(2) of the Act were very limited. After hearing the counsels for the parties, the Labour Court passed

the impugned award relying on a judgment rendered by the Allahabad High Court in the case of Union of India and Anr. v. S.B. Agnihotri and

Anr. reported as 1991 LLJ 603 and awarded interest @ 6% p.a. to the respondent workman from the year 1989 till the date of filing of the LCA

along with costs of Rs. 5,000/-.

5. The dispute between the parties lies in a narrow compass. The only ground taken on behalf of the petitioner management to assail the aforesaid

award is that the Labour Court could not have awarded interest in favor of the respondent workman for the reason that there was no existing right

in favor of the respondent workman which entitled him to claim interest as the said right had not been determined and crystallised in any

adjudication including the award dated 28th January, 1988, passed by the Industrial Tribunal. Thus, it was argued that the Labour Court did not

have the jurisdiction to award interest for the first time in proceedings taken out by the respondent workman u/s 33(2)(b) of the Act.

6. In support of the aforesaid contention, counsel for the petitioner management relied on a judgment of the Supreme Court in the case of

Municipal Corporation of Delhi Vs. Ganesh Razak and Another, .

7. The aforesaid arguments were sought to be refuted by the counsel for the respondent workman who submitted that once the award of the Sole

Arbitrator was upheld by the Industrial Tribunal for being implemented and the award dated 28th January, 1988 was also upheld by the High

Court as well as the Supreme Court, the petitioner management had no option but to implement the same. It was urged that having failed to

implement the award and drag on the matter for almost 11 years, it does not lie in the mouth of the petitioner management to assail the impugned

order dated 19th January, 2005 directing payment of interest to the respondent workman. It was further stated that the petitioner management

denied the respondent workman his legal dues and compelled him to approach the Labour Court and Therefore, he was entitled to receive interest

on the salary/arrears released to him during the pendency of the application.

8. Counsel for the respondent workman thus supported the impugned order and submitted that the Labour Court rightly relied on the judgment of

the Allahabad High Court in the case of S.B. Agnihotri (supra) to hold that the respondent workman was entitled to receive interest on the amount

withheld by the petitioner management unlawfully.

9. The issue with regard to the scope of Section 33C(2) of the Act has already been crystallised by the Supreme Court in the case of Ganesh

Razak (supra). While addressing the question as to whether without prior adjudication or recognition of the disputed claims of the workmen

therein, the proceedings for computation of the arrears of wages claimed by them on the basis of equal pay for equal work were maintainable u/s

33C(2) of the Act, the Supreme Court referred to decisions rendered earlier on the said issue, including those in the cases of The Central Bank of

India Ltd. Vs. P.S. Rajagopalan etc., , Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, , Chief Mining Engineer East India Coal Co. Ltd. Vs.

Rameswar and Others, and Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and held as below:

Para 8. Reference may be made first to the Constitution Bench decision in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., on which

Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings u/s 33C(2) of the Act was considered in a

claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the

applicability of Section 33C(2) of the Act. It was urged that since the applications involved a question for interpretation of the Sastry Award, they

were outside the purview of Section 33C(2) because interpretation of awards or settlements has been expressly provided for by Section 36A. This

objection was rejected. This Court pointed out the difference in the scope of Section 36A and Section 33C(2) indicating that the distinction lies in

the fact that Section 36A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33C(2)

and whereas Section 33C(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. In this context, this Court also indicated that the

power of the Labour Court in a proceeding u/s 33C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the

award or settlement on which a workman bases his claim u/s 33C(2), like the power of the Executing Court to interpret the decree for the purpose

of execution. Relevant extract from that decision is as under-

Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing

individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the

decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from

the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be

competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2). Therefore, we feel no difficulty in holding that for

the purpose of making the necessary determination u/s 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award

or settlement on which the workman's right rests.

This decision itself indicates that the power of the Labour Court u/s 33C(2) extends to interpretation of the award or settlement on which the

workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is

referable to the award or settlement but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior

adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned Counsel for the

respondents.

Para 9: Another decision on the point is *Bombay Gas Co. Ltd. v. Gopal Bhiva and Ors.* 1964 (3) SCR 700, wherein also Gajendragadkar, J., (as

he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that the proceedings contemplated by Section

33C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the

CPC, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to

implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the

form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its

implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then.

10. Thus, it is well settled that where the very basis of the claim or the entitlement of the workman to certain benefit is disputed, there being no

earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement which cannot be treated as incidental to the benefit

claimed, is clearly outside the purview of Section 33C(2) of the Act. The Labour

Court in exercise of its powers u/s 33C(2) of the Act, does not have the jurisdiction to decide the entitlement of the workman first and then proceed to compute the benefits so adjudicated on that basis. Reference in this context may also be made to the judgment of the Supreme Court in the case of State of U.P. and Anr. v. Brijpal Singh reported as 2005 VIII AD (SC) 250 and of this Court in the case of Jeet Lal Sharma v. Presiding Officer, Labour Court IVth and Anr. reported as 2005 (85) FLR 268.

11. The judgment rendered by a Single Judge of this Court in the case of Union of India v. The Presiding Officer, Central Government Labour Court and Anr. reported as 1984 (2) SLJ 576 (Delhi) makes a helpful reference in deciding the present matter, wherein while allowing the workman's claim for deputation allowance, it was held by this Court that no interest as claimed by the workman could be granted on the said deputation allowance, as the jurisdiction of the Labour Court u/s 33C(2) of the Act is only to compute the benefit and not to confer any new benefit.

12. It is also relevant to mention that the Madras High Court, in similar facts, in the case of The Management of Nathan's Press, Madras v. K. Krishnan and Ors. reported as 1988 Lab.I.C. 700, held that the Labour Court u/s 33C(2) of the Act while making computation, has only got the role of an executing court and cannot go beyond the award unless the question is incidental to working the reliefs on the basis of the award. It was further held that the heads of claim could be based only on the award and in the absence of any provision for payment of interest in the award, there could not be a claim for such interest, and the claim of interest not being incidental to the computation of benefits given under the award, the Labour Court would not be justified in granting interest on its own while exercising its powers u/s 33C(2) of the Act.

13. Reliance has been wrongly placed in the impugned order on the judgment rendered by the Allahabad High Court in the case of S.B. Agnihotri (supra) in the year 1991, as the said judgment does not lay down the law on the issue of the scope of Section 33C(2) of the Act. The entire issue has been put at rest after the judgment of the Supreme Court in the case of Ganesh Razak (supra) was rendered in the year 1995. There is no

ambiguity left in this regard and thus it was not appropriate for the Labour Court to deviate from the settled course charted by the aforesaid judgment.

14. In the present case, it is not disputed that no interest was directed to be paid by the Industrial Tribunal in the award dated 28th January, 1988

whereby the petitioner management was only directed to implement the award dated 21st March, 1977 given by the Sole Arbitrator. Thus, it

cannot be stated that the claim of payment of interest was already adjudicated upon and was an existing one in favor of the respondent workman.

The Labour Court in exercise of its powers u/s 33C(2) of the Act cannot enlarge the scope of the said provision by arrogating to itself the function

of adjudicating the dispute relating to the claim of interest made by the respondent workman. The limitations placed on the Labour Court u/s

33C(2) of the Act are of such a nature which do not permit it to entertain a claim put forward by a workman in respect of a matter which is not

based on an existing right and which can be adjudicated upon in an industrial dispute which requires reference u/s 10 of the Act. Despite the fact

that a reference was made by the appropriate authority on the basis of a dispute raised by the workers' union, and the same fructified in the award

dated 28th January, 1988, admittedly, no order was made in the said award for grant of interest in case of delayed implementation of the award.

15. For the aforesaid reason, it is held that the Labour Court committed an error in proceeding to award interest to the respondent workman on

the arrears/salaries paid to the respondent workman in the course of the proceedings. As a matter of fact, once the award was implemented by the

petitioner management, during the pendency of the proceedings before the Labour Court, the application of the respondent workman filed u/s

33C(2) of the Act was rendered infructuous and ought to have been disposed of.

16. In view of the aforesaid observations, the writ petition is allowed. The impugned order dated 19th January, 2005 is set aside. There shall be no

orders as to costs. The petitioner management is at liberty to withdraw 50% of the awarded amount deposited in Court in terms of the interim

order dated 18.11.2005, along with interest, if any, accrued thereon.