

(1985) 11 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No's. 613 and 1192 of 1985

Jetha Drum Containers Pvt. Ltd.

APPELLANT

Vs

S.R. Chanawala and Others and Sultanali Meherally Ratansi
and Another

RESPONDENT

Date of Decision : 30-11-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (1986) 2 BomCR 139

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : B.N. Shrikrishna, for the Appellant; R.J. Kochar, for the Respondent

Judgement

S.M. Daud, J.—These petitions under Article 227 of the Constitution take exception to orders of the Labour Court at Bombay granting retrenchment compensation and other benefits to the erstwhile employees of the petitioner.

2. The petitioner was in the business of manufacturing drums and containers, and, the respondents were working in the clerical section of its establishment. On November 27, 1981, petitioner gave notice of an intended closure of the establishment, pleading that a prolonged strike and continued interruption of work had disabled the Company to such an extent, that it could no longer continue to function. A trade union to which some of the workers of the petitioner were affiliated, moved a complaint bearing No. (UPL) No. 745 of 1981, and, obtained an interim injunction restraining petitioner from giving effect to the notice aforementioned. On 12th and 13th of January, 1982, respondents addressed what are prima facie letters of resignation. A sample of one such letter given at page No. 16 of the paper-book in W.P. No. 613 of 1985 reads thus:

"Dear Sir,

In view of the closure notice and the precarious financial condition of the

Company, I regret to offer my resignation effective from 14th January, 1982.

I will be obliged to have the cheque in my favour being the payment of gratuity since I have already completed more than 5 years of service in the company, along with leave salary for which I shall be very much thankful to you.

I take this opportunity in thanking you for the guidance and co-operation extended by your good self. I will also be grateful to your good self to let me have salary certificate which will be helpful to me in my future.

Thanking you once again,

Sd/-"

On January 21, 1982, the petitioner wrote back to the respondents acknowledging the letters of resignation and acceptance thereof. It was further mentioned in the said communication that payment arising pursuant to the resignation would be made to the person resigning as soon as funds were available. On 25-1-82, the interim injunction issued by the Industrial Court in the aforementioned proceeding, was vacated. That very day, the petitioner issued a notice of closure. Services of all the workers were declared terminated, as, and with effect, from 26-1-82. On 2-2-83, the respondents moved the Labour Court, and it is the orders given on these two petitions which are assailed in the writ petitions before me.

3. The application moved by the respondents were described as ones falling u/s 33C(2) of the Industrial Disputes Act, 1947, hereinafter referred to as the "I.D. Act". Briefly stated, the recital was that the so-called letters of resignation had been procured by the Managing Director of the petitioner company on the assurance that the respondents would be paid the full dues inclusive of closure or retrenchment compensation. The respondents fell in with the suggestion of the Managing Director because of their long standing cordial relations with him. It was only later that the Managing Director went back upon the assurance given, and, this explained with the delay in filing of the applications. The petitioner in its written statement denied the averments summarised above. The three witnesses examined before the Labour Court were, two of the respondent and the Managing Director of the petitioner company. The Labour Court held in favour of the respondents, and, directed the petitioner company to pay various sums unto them. At the stage of admission of these petitions, my learned brother Mr. Justice Jahagirdar gave a direction calling upon the petitioner to pay a part of the amount found due unto the respondents by the Labour Court. The amounts so determined, were deposited, and have been withdrawn by the respondents without furnishing security. In the petitions, it is submitted that the applications moved by the respondents were untenable vis-a-vis section 33C(2) of the I.D. Act, and, that on merits the Labour Court was wrong in directing payment of retrenchment compensation unto the respondents. The contentions raised by petitioner have to be upheld, and, I allow the petitions for the reasons given below.

REASONS

4. Mr. Kochar appearing for the workmen has first referred me to two decisions of the Supreme Court, the ratio whereof is that a High Court should not interfere under Article 226 or 227 of the Constitution to correct what are mere technical errors. In other words, if the courts below have passed order which can be described as just in the plain sense of that term, it will not be proper on the part of the High Court to intervene in the name of exercising its extra ordinary or supervisory jurisdiction under Article 226 and/or 227 of the Constitution. There can be no quarrel with this proposition, though it is some what broadly stated by learned Counsel. Restricted the jurisdiction of High Court under Article 227 may be. However, an error of jurisdiction committed by a Court or tribunal cannot be allowed to stand if the error is so clear, as to amount to usurpation of jurisdiction by a Court or tribunal. In the instant case, as I will show later, the Labour Court has come to a decision which is patently inconsistent with the proved facts, and, in doing so, has broken out of the confines under which it was supposed to function vis-a-vis section 33C(2) of the I.D. Act. To a verdict, resulting from a patent disregard of the factual position and also the legal confines, the authorities relied upon by Mr. Kochar do not apply.

5. In the initial stages, I have quoted in full the letters of resignation sent by the respondents. Prima facie there is nothing in them to indicate that it was a camouflaged dismissal. In terms, the letter recited that the resignation was in the background of a closure notice and the precarious financial conditions of the Company. It was argued that the respondents had put in long service, and, knew that the company was disintegrating and which disintegration would entitle them to retrenchment compensation. In the face of this knowledge, the employees but for the inducement offered, could not have tendered their so-called resignations. Forget generalisations and let us consider the facts. Respondent Sultanali Rajabali Chanawala says that the letters were placed before him and his companies, and after perusal by them, were construed as "resignation letters". Thereupon, the witness speaks of himself and his companions questioning the Managing Director. The Managing Director told them that if they did not sign the letters, he would not make any payment to them. The respondents were told that if they wanted to go along with the rest of the workmen, it would be a long time before they would get any money into their hands. Upon this, the respondents signed the resignation letters as also applications seeking gratuity. As a member of the ministerial staff of the company, Chanawala was not ignorant of what was going on. To quote from his evidence:---

"There were so many cases pending in the Court against the company---True that there was strike for 10 months in the company. True that the business of the company was also stopped during those 10 months---It is not true that the company had not asked me to tender resignation---"

The other witness-Shamshuddin says:---

"We were led to believe that the company would give us cheques within 3 or 4 days. After 4 days we were told that arrangements were not yet made. The company asked us to come after 4 days. Thereafter we used to go to the company to collect amounts of our legal dues but we were asked to come later on. We waited for 8 months. Thereafter we filed the applications. We did not want to resign on 13-1-82 or any other date---I had received letter dated 21-1-82 from the company. In that letter it is stated that I had given resignation and that thereafter I stopped reporting to duty. I did not give reply to the letter. I did not send a letter to the company informing them that they had promised to pay me the retrenchment compensation within 4 days and that they did not pay me the same---"

It is, therefore, clear that the respondents are not the sort of persons who could be duped by the petitioner-company or its Managing Director. Mr. Kochar submits that the conclusion of the facts made by the Labour Court should be accepted. Normally, the finding reached by a Court or tribunal which has recorded the evidence, and, has had occasion to witness the demeanour of the witnesses, is not to be trifled with. Here, the Labour Court has not given due importance to the evidence. It has gone by mere surmises. The workers said that they were tricked into giving the resignation letters by the Managing Director. This mere say-so was accepted by the Labour Court, because it believed that anyone similarly situated, would do so, having regard to the long association between the employees and employer. But the respondents here are not ordinary workers. They formed part of the ministerial staff component of the concern. In fact, some of them were attending to litigation on behalf of the company, when the same was pending in other courts. Their applications were moved almost a year after the acceptance of the resignations. The explanation for the delay viz. that the respondents were waiting for the Managing Director to honour his commitment, is on the face of it, unbelievable. Shamsuddin in his testimony says that as early as February 1982, the Managing Director had advised him not to pester him any longer in relation to the dues. Even so until 2-2-83, none of the respondents thought it necessary to move the Labour Court u/s 33C(2). Counsel appearing for the petitioner is right in submitting that what led to the filing of the applications was knowledge that the other workers of the company had been paid their dues and the conference which took place amongst the respondents thereafter. To that effect is the testimony of respondent Hussainali A. Bana in P.G.A. No. 107 of 1983. Hussainali admitted that the conference between the respondents leading to the applications u/s 33C(2) was inspired by the knowledge that the other workers had been paid the retrenchment compensation. Factually, therefore, it is not possible to accept the Labour Court's conclusion that the letters of resignation were the result of deception practised upon the respondents by the Managing Director of the petitioner-company. Having regard to all the circumstances, it appears that the respondents wanted to get out of sinking ship, and, take whatever they could in the matter of testimonials and gratuity etc. Had they been a little more patient, they would

have got retrenchment compensation. That they committed an error of judgment, is, neither here nor there and certainly does not lend credence to their story.

6. The Labour Court has also overruled a plea advanced on behalf of the petitioner about section 33C(2) not being applicable to the nature of the relief claimed by the workmen. It is true that the written statement filed by the company does not in clear terms advance the plea of lack of jurisdiction. However, this contention was raised at the stage of the arguments and being a plea of the law, the Labour Court was under an obligation to consider it properly. The question of the limits of section 33C(2) of the I. D. Act has come up for consideration in a number of cases. In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another,

"It is now well-settled that a proceeding u/s 33C(2) is a proceeding generally, in the nature of an execution proceeding wherein in the Labour Court calculates the amount of money due to a workmen from his employer, or if the workmen is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefits in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or otherwise, duly provided for. In Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, it was reiterated that 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 workmen is in such cases in the position of an Executing Court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an Industrial workman and his employer.

In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed 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 No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination 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 determinants (i) and (ii) above is, normally outside its scope. It is true that in a proceeding u/s 33C(2), an 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 score. 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 determinants (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 determination (i) and (ii) are not "incidental" to the computation. The computation itself is consequential upon and subsidiary to determinants (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandewal*, (1968)2 Lab.L.J. 589 S.C., that a workman cannot put forward a claim in an application u/s 33C(2) in respect of matter which is not based on an existing right and which can be appropriately the subject matter of an Industrial Dispute which requires a reference u/s 10 of the Act."

A Division Bench of this Court has also had an occasion to consider the question involved in *Ramkrishna v. State of Maharashtra*, reported in 1975 Labour and Industrial Cases 1561. There from the following passage is specifically relied upon by Mr. Kochar :---

"The decision, therefore, is clearly an authority for the proposition that where the claim is founded on the statutory provisions such as section 25F or section 25FFF and the claim is contested on the ground that there was no retrenchment or that there was no closure, then merely on such a plea the jurisdiction of the Labour Court cannot be ousted and the Labour Court was competent to go into the question firstly, whether there was a retrenchment or not or closure or not and in case the finding was in favour of the employee, then to proceed further to compute the benefit in terms of rights given in Chapter V-A of the Act. The present case falls squarely within the dictum of the Supreme Court in *R.B. Bansilal Abirchand Mills Co. case*, 1972 Lab.I.C. 285. The whole case of the employee is that there had been a closure and it is the benefit to which she is entitled under the provisions of section 25FFF that she wants to be computed. The Labour Court in such circumstances would clearly have jurisdiction to go into the question of the closure the factum of which does not now seem to be disputed. The question whether there was closure or not, therefore, does not arise."

First, the position in the present petitions has to be clearly understood. Respondents came to the Labour Court contending that what were prima facie letters of resignation, had been procured from them by trickery. In fact, they had been retrenched and were, therefore, entitled to retrenchment compensation. But to decide this question, it was necessary for the Labour Court to determine the basic question viz. whether there was in fact a resignation or a retrenchment. Properly speaking, this could only be the subject of a dispute u/s 10 of the Act.

The relevant item from the Second Schedule of the Act, would be that bearing No. 3 and reading as follows :---

"The discharge or dismissal of workman including reinstatement of or grant of relief to workman wrongly dismissed."

The nature of the transaction which brought about a disruption of the relationship of the employer and employee was under consideration. That had first to be ruled upon, and, it could not be done u/s 33C(2) of the Act. Upon a proper reference made u/s 10, it would have been open to the Labour Court to consider whether the resignation was in fact a retrenchment or whether it was what it purported to be viz. a resignation. Therefore, on this ground also the Labour Court's finding is erroneous. The only question left is whether the workman who have withdrawn the sums which were deposited under a direction of Mr. Justice Jahagirdar, should be directed to re-credit the same? Having regard to all the circumstances, and specially, the fact that the several other workmen got retrenchment compensation, I do not think it necessary to give the direction aforementioned. Hence the order.

ORDER

Rules made absolute. The direction of the Labour Court in the two cases, except to the extent of the sums deposited by the petitioner and withdrawn by the respondents, are quashed. Having regard to the equities of the cases, parties are left to bear their own costs.