

(1968) 02 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 460 of 1966

Management of Socklatinga Tea Estate	APPELLANT
Vs	
N.J. Korean and Another	RESPONDENT

Date of Decision : 02-02-1968

Acts Referred:

Assam Industrial Disputes Rules, 1958 — Rule 65
Industrial Disputes Act, 1947 — Section 10(1), 33C(1)(2)(3), 38, 7(1)
Land Acquisition Act, 1894 — Section 30

Citation : (1968) 02 GAU CK 0001

Hon'ble Judges : C. Sanjeeva Row Nayudu, C.J.; M.C. Pathak, J.; K.C. Sen, J

Bench : Full Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, for the Appellant; P. Choudhuri and G.K. Talukdar, for the Respondent

Final Decision : Allowed

Judgement

C. Sanjeeva Row Nayudu, C.J.—This petition comes before us on an order of reference made by a Division Bench of this Court which is extracted below.

27-11-1967, In this case the interpretation of Section 33C(2) of the Industrial Disputes Act arises for consideration. The contention of Mr. Bhattacharjee is that unless the Labour Court is specified by the State Government under this Sub-section, the Labour Court in question would not get jurisdiction to decide the matter whereas. Mr. Choudhuri contended that as there is only one Labour Court in the whole State there is no need to specify the particular Court and that the Labour Court has jurisdiction to entertain the matter. In support of this argument he places reliance on a Division Bench decision of this Court in the case of Sudhindra Kumar Deb and Others Vs. The State of Assam and Others, It is contended by Mr. Bhattacharjee that the observations made in that case are more or less obiter and need not be considered for the decision of this case. However, the pronouncement is fairly specific and clear in that decision. We would therefore like the whole matter to be settled once for all by referring the

matter to a Full Bench. The matter will be heard by the C.J., Justice Sen and Justice Pathak on 1st February, 1968.

(Sd.) C. Sanjeeva Row Nayudu, Chief Justice. (Sd.) M.C. Pathak, Judge.

2. Two points arise for consideration in his reference (I) Whether an application for computation of a workman's entitlement u/s 33C(2) of the Industrial Disputes Act, 1947 (hereafter called "the Act") could be made to Labour Court without the same having been specified by the State Government in regard to the dispute that is to be referred to u/s 33C(2) and (2) whether the workman could refer the dispute u/s 33C(2) directly to the Labour Court and not by an application to the State Government.

3. Before we consider these points, it would be useful to extract the relevant provisions of the Act. The relevant provisions of Section 7 of the Act, which deals with Labour Courts, is as follows:

7. (1). The appropriate Government may, by notification in the official Gazette, constitute one or more Labour Courts for adjudication of industrial disputes relating to any matters specified in the Second Schedule and for performing such ther functions as may be assigned to them under this Act.

The Second Schedule to the Act contains the list of matters, which fall within the jurisdiction of the Labour Courts. Section 33C runs 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 Chap v. A, the workman 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.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be. necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

4. It may be seen from the language of Section 33C(2) that the amount which the workman is entitled to receive is to be determined by the Labour Court,

which is specified by the State Government in this behalf. In other words, the Labour Court has got to be specifically mentioned and it should also be mentioned by that a State Government that a particular matter which is referred to u/s 33C(2) is to be determined by the Labour Court. Mr. Bhattacharjee, the learned Counsel for the Petitioner the Management of Socklatinga Tea Estate contends that the particular Labour Court, was not specified, nor was the matter in regard to the dispute in this case mentioned by the Government in a reference to the Labour Court under Sub-section (2) of Section 33C. To this Mr. Choudhuri, the learned Counsel for the workman Respondent No. 1 Shri N.J. Korean, stated that as there has been only one Labor Court for the whole State of Assam no particular specification is necessary and that all duties that could be performed by the Labour Court under the Act could be performed by that Labour Court, as that is the only Labour Court for the State. It may be that there has been only one Labour Court for the whole State. But that Labour Court, according to the Sub-section has got to be specified for performing this particular duty and no material has been placed before us to show that any such specific earmarking of this duty has been made by the Government in regard to the one Labour Court, which was functioning in the State. In view of the fact that the Sub-section uses the word specified and also the words in this behalf, there can be no doubt that the insistence is on the specification as well as with reference to the particular subject-matter of dispute. In the instant case as it is not specified by the State Government in a reference that the Labour Court, which is the only Labour Court in the State of Assam, is entrusted with the duty of determining the amount payable to the workman Respondent No. 1, we feel that the Labour Court had acquired no jurisdiction to dispose of the matter under Sub-section (2) of Section 33C, simply on an application filed before it by the Respondent No. 1. It is possible that there may be only one Labour Court and yet the the State Government may not entrust certain matters to that, Labour Court. The whole object of the Sub-section is to reserve the right to the State Government to specify the duty in the particular circumstances of the case, so that these conditions must be complied with before jurisdiction of the Labour Court u/s 33C could be invoked.

5. In this connection reliance has been placed by Mr. Choudhuri the learned Counsel for the Respondent No. 1 on a Division Bench decision of this Court in the case of Sudhindra Kumar Deb and Others Vs. The State of Assam and Others, That was no doubt a case u/s 33C(2) of the Act. But the facts are materially different, because in that case the application was made to the Labour Court functioning in the State by the State Government, so that the condition required by the Sub-section is fulfilled in that case and the only question that arose for determination was whether the cancellation or revocation of the notification in that case was valid or not. In that context certain observations appear to have been made which we consider are obiter and were not necessary for the determination of that case. The observations are to be found at page 3 of the report:

Mr. Choudhury has further contended that even the first notification in that case was unnecessary because in Assam there is only one Labour Court and if that Labour Court could deal with the matter, no specification of the Labour Court was necessary. Of course, Sub-section (2) speaks of Government specifying the Labour Court to deal with the matter nevertheless, the statute confers jurisdiction on the Labour Court to act under Sub-section (2) of Section 33C and no other Tribunal. It is admitted here that there is only one Labour Court and thus there is substance in the argument that where there is only one Labour Court, apparently that Court alone will have jurisdiction to deal with the matter irrespective of any notification by Government.

It is only where there are a number of Labour Courts functioning in a State that specification of the particular Labour Court to take up the matter on the authorisation of Government may be necessary to avoid any conflict of jurisdiction between them; but where there is only one Court, no such conflict arises and that Court will have, on the terms of the statute itself, jurisdiction to determine the dispute between the parties and act under the section aforesaid.

We consider, as already observed, that these observations are mere obiter and if they are to be regarded as making a statement of law on the subject, we respectfully disagree with these observations and hold that they do not lay down the correct law on the subject.

6. The next question to be considered is whether the application in this case could be made directly by the workman Respondent No. 1 to the Labour Court, or whether an application should have been made by the workman to the State Government for the purpose of making a reference. In considering this question it will necessary to refer to Rule 65 of the Assam Industrial Disputes Rules, 1958. which runs as follows:

An application u/s 33C shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of Assam Labour Department Shillong.

It is clear from this rule that an application u/s 33C(1) or Section 33C(2), as both these Sub-sections are covered by Section 33C, must be made to the Secretary to the State Government of Assam, Labour Department Shillong. The important of these rules and the necessity for complying with the same are clear from Sub-section (2) of Section 33C which says that the procedure under the Sub-section is subject to any rules that have been made under this Act and these rules are the Assam Industrial Disputes Rules, 1958 framed by the State Government. It is contended by Mr. Choudhuri that the qualifying clause subject to any rules that may be made under this Act should only be read in connection with the computation of the benefit and he accordingly contended that in computing the benefit the rules framed by the State Government would have to be followed. But this interpretation does not follow from the language of the rule. To our mind it would appear that whatever is done under that Sub-section should

be subject to any rules that may be made under the Act by the State Government, and as the operation of the Sub-section in question is subject to the rules and as the rules framed provide that the application should be made to the State Government, it follows that a direct application to the Labour Court by the workman is excluded. This interpretation is accepted by a Bench of the Calcutta High Court in the case of *The Indian Iron and Steel Co. Ltd. and Another Vs. Treogi Nath and Others*, where their Lordships observed as follows:

The jurisdiction of the Labour Courts is limited by the items specified in the second schedule and even with regard to these their powers are dormant so long as there is no reference to them u/s 10(1)(b) or (c) of that Act. The only instance when they can exercise any power without specific reference by the Government seems to be u/s 33() and Section 33(3) of the Act where it is open to a Labour Court to give permission in writing to an employer to take the steps mentioned in Clause (a) and (b) of the said Sub-sections.

In my view. Section 7(1) only enables the appropriate Government to assign certain functions to Labour Courts within the limits specified by the Act. It seems reasonable to hold that Government can make use of the rule-making powers u/s 38 of the Act for the purpose but nothing appears to have been done in that respect. The expression "as may be assigned to them under this Act in Section 7(1) does not mean as they are competent to discharge under the Act." Before a function can be discharged there must be assignment under the Act.

We are fully in agreement with these observations. We further hold that the Labour Court is not like a Civil Court or a Court of general or residuary jurisdiction, but a Court of specified jurisdiction enumerated by the terms of the order of reference. It may be regarded as an *ad hoc* Court with an *ad hoc* jurisdiction to determine specified industrial disputes of matters connected therewith. It is certainly unlike an ordinary Court to which aggrieved parties may resort whenever they think it necessary to do so.

We are, therefore, clearly of opinion that an application u/s 33C(2) cannot be made directly by the workman but the application has to be made to the state Government.

7. It is contended by Mr. Choudhuri that as the Petitioner had submitted, himself to the jurisdiction of the Labour Court it would not be to the Petitioner, to question the jurisdiction of the labour court. In support of this contention he placed reliance on two single bench decisions of the Madras High Court: (1) *Mannarghat Union Motor Services Ltd., Mannarghat, South Malabar Vs. Regional Transport Authority, Malabar and Others*, and (2) *R.V.K.M. Surya Rao Bahadur Varu, Rajah of Pithapuram Vs. The Board of Revenue (Settlement of Estates) Madras*. But the answer is supplied by the decision of the Supreme Court in the case of *K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others*, where their Lordships of the Supreme Court held that whenever there is lack of *inherent* jurisdiction, the objection could be taken at any stage. At page 306

of the report their Lordships observed as follows:

The proviso to Sub-section (2) prescribes the time within which an application under sub-section (1) is to be made. Section 19 provide the making of a reference by the Collector and specifies the matters which are to be comprised in that reference. Thus, the matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objection made, by a claimant to the award. Section 21 restricts the scope of the proceedings before Court to consideration of the contention of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the Court arises solely on the basis of reference made to it. No doubt, the Acquisition Officer has made a reference u/s 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the Court with the jurisdiction to consider a matter not, directly connected with it.

In that context their, Lordships observed that as the Jurisdiction is lacking from the inception, the objection could be entertained at any stage. Applying the reasoning of this decision to the facts of the instant case, we hold that as no reference has been made to the Labour Court u/s 33C(2), the Labour Court had no jurisdiction to dispose of the matter in question. In the circumstances we do not see any force in the contention raised by Mr. Choudhuri that the question of jurisdiction could not be raised before us by, the Petitioner.

Mr. Choudhuri also placed reliance on a decision of the Supreme Court in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., But that was, a case arising under the rules framed by the Central Government which apparently contemplated a direct application to be made to the Labour Court and as the section itself is subject to the rules framed by the appropriate Government and the rules provided for such a contingency, it was held that the application was competent. As the rules framed by the State Government of Assam are quite different on the subject this ruling cannot be held to apply to the facts of this case.

8. In the light of the foregoing discussion the rule is made absolute and the petition is allowed. In the circumstances, however, we direct that each party shall bear then own costs.