
(2017) 01 CAL CK 0052
In the Calcutta High Court
Case No : W.P. No. 389 (W) of 2016

Metal Box India Limited

APPELLANT

Vs

Arup Kumar Datta

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33-C(2)

Citation : (2017) 1 LLN 371

Hon'ble Judges : Sambuddha Chakrabarti, J.

Bench : Single Bench

Advocate : Mr. Partha Sarathi Sengupta, Senior Advocate, Mr. Soumya Majumder, Mr. Debashish Bhowmick, Mr. S.K. Singhi and Ms. Riti Basu, Advocates, for the Petitioner; Mr. Suvadip Bhattacharjee, Advocate, for the Respondent No. 1; Mr. Tapas Kr. Adhikari, Advocate, for the State\Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—By this writ petition, the petitioner has, inter alia, prayed for a writ in the nature of mandamus commanding the respondents to withdraw the orders, dated March 21, 2013 and September 30, 2015 respectively passed by the Learned Judge, 2nd Labour Court, West Bengal, and for other ancillary reliefs.

2. The case of the petitioner, inter alia, is that it was declared sick in the year 1988 and its factory in Kolkata was placed under suspension of work since December 29, 1987. According to the petitioner all the workmen, including the respondent no. 1 who was posted in a factory of the petitioner company, were paid their full salaries and wages upto the date of suspension of operation and there is nothing due to any workman towards back wages.

3. The scheme for revival of the petitioner company was sanctioned by the Appellate Authority of Industrial and Financial Reconstruction (AAIFR) in the year 2000. The operating agency, i.e., ICICI Bank, clarified by a communication,

dated July 5, 2002, that the sanctioned scheme did not provide for interest on delayed payment of employees' dues including gratuity. The scheme did not also envisage payment of any back wages for the period the units were closed. The company was further intimated that any additional payment in respect of interest for delayed payments would jeopardize the implementation of the scheme.

4. The scheme provided for phased payment of dues of workmen, bank, financial institutions and other creditors.

5. It is the further case of the petitioner that out of 2,700 workmen of the Kolkata units and establishments about 2,600 workmen have been paid their dues in terms of the provisions of the Scheme and the agreements negotiated with the Kolkata Unions.

6. The respondent no. 1, an ex-employee of the company, after considerable delay filed an application under Section 33C (2) of the Industrial Disputes Act, 1947 (the Act, for short) in the year 2008. He had, inter alia, claimed wages along with different allowances and service benefits for the post-suspension of work period i.e., for the period starting from December 29, 1987.

7. The petitioner herein contested the said application by filling a written objection alleging, inter alia, that in the absence of any pre-existing right to claim wages after the suspension of work the Labour Court could not entertain the said application. The petitioner company also filed an application for deciding the maintainability of the claim application as a preliminary issue.

8. Again, one of the signatory trade unions filed an application for addition of party seeking to stand by the clauses of Memorandum of Settlement executed in the year 2007. The respondent no. 1 opposed such application and same was rejected by the Labour Court. Pursuant to an order passed by this court the application for deciding the maintainability of the claim application of the respondent no. 1 was decided at the final hearing.

9. The Labour Court by an order dated March 22, 2013 allowed the application under Section 33C (2) of the Act.

10. It has been the allegation of the petitioner that many aspects of the matter, even though argued before the Labour Court was not considered while allowing the application under Section 33C (2) of the Act. Consequently, the company filed an application for reconsideration of the matter. The said application was also rejected by the Labour Court by an order dated September 30, 2015.

11. As mentioned before, both these orders have been assailed in the present writ petition.

12. It may be mentioned that despite given being opportunity the respondents did not file any affidavit-in-opposition. However, the respondent no. 1 had appeared at the hearing of the petition.

13. The Labour Court framed three points for determination of the respective

cases of the parties, viz.,

- i) whether the case was maintainable,
- ii) whether the case was barred by limitation and
- iii) what other relief, if any, the applicant was entitled to.

14. So far as the first two points are concerned, the learned Judge of the Labour Court had held that under Section 33C (2) of the Act there is no period of limitation prescribed for making an application by the concerned workman. Taking note of the view expressed by the Supreme Court on the adverse effects of entertaining a belated claim, the learned Judge observed that the apex court declined to introduce any period of limitation in the absence of any legislative provision to that effect. The learned Judge analysed the evidence on record that the company declared suspension of work on December 29, 1987. When the gate of the establishment was locked, the applicant before the Labour Court used to visit office regularly and sit outside the gate. He had made written correspondence with the provident fund authorities, the labour office and with the company and had no knowledge whether the management of the company had moved for Board of Industrial and Financial Reconstruction (the BIFR, for short). The learned Judge held that all the employees had retired from service and they also did not get any amount towards their gratuity. Therefore, the financial condition of the applicant before the Labour Court was very poor. Considering the helpless condition of the applicant, the learned Judge thought that liberal view had to be taken in this regard and the delay in filing the application should be condoned as otherwise it would cause hardship to her.

15. So far as the third point, i.e., the relief that the applicant before the Labour Court was entitled to is concerned the learned Judge overruled the objection of the company that it was a sick industry and the proceeding in the BIFR was continuing and the operating agency declared that no payment would be made to any person for any reason whatsoever. So, this entitles the applicant from seeking any back wages or other consequential benefits. The learned Judge observed that the management did not specify the time duration for the period of suspension, neither did the company have any document to show that any higher forum passed any order restraining the Labour Court from proceeding with the computation proceeding. The business of the company was continuing on a skeletal basis as per the revival scheme of the BIFR. Therefore, when there is no stay order from any competent authority there was no bar to consider the claim of the applicant.

16. On merits, the Labour Court found that the company did neither issue any notice before declaration of suspension of work nor could it produce any document to show that they served notice to the applicant either individually or through union prior to the same. The applicant also claimed that he was not in employment of any other establishment after the declaration of the suspension of work till his retirement. He wrote letter to the company demanding justice on

February 14, 2008.

17. The learned Judge held that the company declared suspension of work without giving any prior intimation to the husband of the applicant and did not produce any document to show that it paid any amount to him at any point of time prior to the filing of the case or during its pendency. He thus concluded that the applicant has been able to prove her case by both oral and documentary evidence and allowed the application under Section 33C (2) of the Act. He was declared entitled to get Rs. 10,41,549.25 as per the claim petition. The company was directed to pay the said amount within a period of 90 days from the date of passing of the order.

18. Mr. Sengupta, the learned Senior Counsel for the petitioner, submitted that since the entire claim of the respondent no. 1 related to the period after the suspension of work there cannot be any preexisting right in favour of the private respondent without any adjudication about the legality of the suspension of work. A notice for suspension of work clearly dis-entitles an employee to wages during the period of suspension of work. The same has not been challenged before any competent court for a declaration that the suspension of work was unjustified and, therefore, illegal and that the employees would be entitled to get their full salaries or wages during this period. As a matter of fact, in the present proceeding also the respondent no. 1 did not seek for any adjudication about the legality of the suspension of work. Therefore, the entitlement of an employee to claim wages after the declaration of suspension of work ceased on and from the date on which the units of the company were placed under suspension of work and that was very specifically mentioned in the notice itself.

19. Mr. Sengupta further mentioned that the BIFR declared the company a sick industrial undertaking and appointed ICICI Bank as an operating agency. Ultimately, a scheme was sanctioned by AAIFR. The operating agency by its letter dated July 5, 2002, made it clear that the scheme did not envisage in particular payment of back wages for the closed period. Referring to the agreements of two segments of the Kolkata Union with the company on July 10, 2007 and the subsequent Updated Sanctioned Scheme the company argued that there was no preexisting right or a pre-adjudicated right in favour of the respondent no. 1 to claim wages or any part thereof during the period of suspension of work and the application under Section 33C (2) of the Act relates to the period after the suspension of work upto the notional date of superannuation of the respondent no. 1. If such a claim is not based on any existing right or upon an adjudication leading to determination of an enforceable right an investigation or enquiry into the question of adjudication or entitlement was beyond the scope of Section 33C (2) of the Act. The Labour Court had accepted the contention of the company that it could not arrogate to itself the function of an industrial tribunal which is entitled to adjudicate upon matters covered under Section 10 (1) of the Act and to decide the rights of a workman or the existence of a liability on the part of the employer, but has nonetheless

virtually done the same. As a matter of fact, the Labour Court has clearly discussed the scope of applicability under Section 33C (2) of the Act. It says that an application under that provision applies only to a workman who is entitled to get a benefit, whether mandatory or non-mandatory, which is capable of being computed in terms of money and, therefore, the Court is called upon to compute in terms of money, the benefit claimed by the workman and it is in the position of an executing court.

20. Mr. Sengupta relied on the judgment in the case of Central Inland Water Transport Corporation Ltd. v. The Workmen and Another, reported in AIR 1974 SC 1604, which has also been relied upon by the Labour Court, for a proposition that a proceeding under Section 33C (2) of the Act is generally in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employment or if the workman is entitled to any benefit which is capable of being computed in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudicated or, otherwise, duly provided for. If the applicant has three kinds of reliefs to be determined viz, i) right to relief, ii) corresponding liability of the respondent and iii) the extent of the respondent's liability an investigation of the nature of the determinations under heads (i) and (ii) is clearly outside the scope of a proceeding under Section 33C (2) of the Act. Therefore, the Supreme Court laid down, when a claim is made before a Labour Court under Section 33C (2) of the Act that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions of an industrial tribunal or proceed to compute the benefit by dubbing an incidental exercise to its main business of computation. In such cases determinations under (i) and (ii) are not incidental to the computation. The computation itself is consequential upon and subsidiary to their determination as the last stage in the process which commenced with a reference to the Industrial Tribunal.

21. Mr. Sengupta further relied on a case of Municipal Corporation of Delhi v. Ganesh Razak and Another, reported in (1995) 1 SCC 235, where a three-judge bench of the Supreme Court had examined the scope of the adjudication under Section 33C (2) of the Act. There also the Supreme Court held that the right to the benefit which is sought to be computed under Section 33C (2) of the Act must be an existing one, i.e., already adjudicated upon or provided for. Relying on an earlier judgment in the case of Chief Mining Engineers East India Coal Company Limited v. Rameswar, reported in AIR 1968 SC 218, the Supreme Court mentioned the propositions on the scope of the said provision of law as were summarized in that case and further held that in the case of Municipal Corporation of Delhi (Supra) where the very basis of the claim or entitlement of the workmen to a certain benefit was disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C (2) of the Act. A Labour

Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, the interpretation is treated as incidental to the labour court's power under Section 33C (2) of the Act like that of an executing court's power to interpret the decree for the purpose of its execution.

22. In *State of U.P. and Another v. Brijpal Singh*, reported in (2005) 8 SCC 58 also the Supreme Court reiterated that a proceeding under Section 33C (2) of the Act is in the nature of an execution proceeding and a Labour Court calculates the amount of money due to a workman from the employer, or the workman is entitled to the benefit which is capable of being computed in terms of money. It proceeds to compute the benefit in terms of money. The right to an amount of money which is sought to be calculated or the benefit which is sought to be computed must be a preexisting one i.e., already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer. The Labour Court exercising jurisdiction under Section 33C (2) of the Act cannot take upon itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act. A Labour Court has no jurisdiction to decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C (2) of the Act. The difference between a pre-existing right or benefit on one hand and the right or benefit which is considered just and fair on the other hand is vital. The former falls within jurisdiction of a Labour Court exercising powers under Section 33C (2) of the Act while the latter does not. The appropriate forum where question of back wages could be decided is only a proceeding before a forum to which a reference under Section 10 of the Act is made. Therefore, a Labour Court had no jurisdiction to adjudicate the claim made by the respondent, with reference to the facts of that case, under Section 33C (2) of the Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent could not seek for the relief under Section 33C (2) of the Act.

23. Mr. Sengupta lastly relied on the case of *D. Krishnan and Another v. Special Officer, Vellore Cooperative Sugar Mill and Another*, reported in (2008) 7 SCC 22, on substantially similar proposition of law which has been mentioned before.

24. Mr. Sengupta submitted and Mr. Bhattecharjee, the learned Advocate for the respondent no. 1 admitted, that there is no preexisting right to attract the jurisdiction of the labour court under Section 33C (2) of the Act. Mr. Bhattacharyya admitted that the concerned workman has not questioned the legality and the validity of the lock out and there has not been any adjudication

on that. He submitted that the application before the Labour Court was more in the nature of a mercy petition. As a matter of fact Mr. Bhattacharyya did not dispute the contention of Mr. Sengupta nor did he controvert the points of law.

25. The judgment and order impugned very specifically says that the Labour Court was also aware of limitations on its powers while exercising the jurisdiction under Section 33C (2) of the Act. The discussion about the scope of a proceeding under Section 33C (2) of the Act by the Labour Court brings out unmistakably of its awareness about the extent to which it could go while adjudicating such a proceeding.

26. However, what cannot be very easily comprehended is why the Labour Court even after recording the settled principle of law regarding the scope of jurisdiction of its exercise of power under Section 33C (2) of the Act, proceeded to consider and eventually pass the order as it did. As has been mentioned earlier, the point that seemed very weighty with the learned Judge of the Labour Court is the deposition of P.W. 1 that the company did not issue any notice before declaration of suspension of work to the applicant. And from this the learned Judge concluded that the applicant before him was able to prove his case by oral and documentary evidence and was entitled to get relief as prayed for. This is plainly an unsustainable conclusion. Apart from the fact that the entire enquiry embarked upon by the Labour Court was not permissible and was clearly against its jurisdiction the conclusion arrived at is not based upon any factual basis. As a matter of fact, this is a judgment sans any reasoning for the relief granted to the respondent no. 1 herein. The conclusion after merely recording that the company had not given any notice of suspension of work to the concerned workman nor did it pay any money after suspension of work, appears to be a super-imposed one without going through any logical process. Such a conclusion must be reckoned to be an improper and a thoroughly mistaken one. The judgment does not follow the essential correlation between the conclusion and the reasoning based on the facts of the case.

27. I quite also agree with the submission of Mr. Sengupta that the claim petition under Section 33C (2) of the Industrial Disputes Act was a grossly belated and a stale one rendering it liable to be dismissed on that ground alone. The disposal of the objection taken by the petitioner company before the Labour Court does not appear to be either very cogent or based on a sound principle of law. The question is not so much whether Section 33C (2) of the Act contains any period or limitation. The important question one has to address oneself is whether an applicant seeking to espouse his claims in a court of law is vigilant and acts with sufficient promptitude. Some applications have been entertained even after an inordinate delay is no answer to the question raised by the petitioner company that it has been done without considering the fact situations of individual cases. Even on this point the learned Judge was aware of the legal position. But how the fact situation in the present case demanded condonation of delay in approaching the court has not been gone into by the court below. The only reason that

appears to have weighed with the learned Judge was the helpless financial condition of the applicant. Therefore, the Labour Court thought that the application under Section 33C (2) of the Act ought to have been entertained otherwise it would cause hardship to the applicant.

28. I am afraid, in this process the learned Trial Judge failed to balance between the respective hardships of the contesting parties. Entertaining an application after gross delay also causes considerable hardship to the employer. Considering and taking into account a unilateral hardship of one party alone and not considering the same plight that may befall an employer is a one-sided adjudication of an issue. Even if, there is no statutory period of limitation, as in a writ petition, judicial decisions have made it a settled position of law that an application made beyond reasonable time is not to be entertained by a court of law. In the absence of any finding about the mitigating circumstances entitling an applicant to maintain his application under Section 33C (2) of the Act the court should not have allowed the application to be entertained.

29. For the reasons aforesaid, the order impugned in the writ petition cannot be sustained. The orders are bad so far as the merits on the case is concerned and unsustainable as regards its jurisdiction to interfere in such a proceeding.

30. Mr. Sengupta wanted to put the points which were argued before the Labour Court on record. In view of what I have already discussed and held before this is not necessary for the present purpose.

31. For the reasons aforesaid, the writ petition is allowed. The order dated March 21, 2013 is set aside. Since the order allowing the application under Section 33C (2) of the Act by the Labour Court is set aside and quashed the subsequent order, dated September 30, 2013, rejecting the petitioner's application seeking reconsideration of the points not dealt with by the Labour Court is not necessary to be separately considered. The application becomes infructuous and so is the order passed on such an application.

32. The writ petition is thus allowed.

33. There shall be no order as to costs.

34. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.