
(1964) 07 CAL CK 0009
In the Calcutta High Court
Case No : Appeal No. 202 of 1963

M.L. Bose and Co. Private Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-07-1964

Acts Referred:

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

Citation : AIR 1965 Cal 454 : (1968) 1 LLJ 638

Hon'ble Judges : R.S. Bachawat, J;D. Basu, J

Bench : Division Bench

Advocate : R.C. Deb and Arun Dutt Sr, for the Appellant; P.K. Sanyal and N.R. Ray for No. 3 and P.P. Ghosh, for No. 1, for the Respondent

Final Decision : Dismissed

Judgement

D. Basu, J.—An industrial dispute arising out of the dismissal of some workmen of the Appellant Company was referred by the State Government to the Third Industrial Tribunal, West Bengal.

2. The Industrial Tribunal made its award on the 4th of December, 1958, holding that the dismissed workmen should be reinstated and that they should be paid by way of compensation 1/3 of the emoluments for the period between the dates of their dismissal and the dates of their re-instatement An appeal to the Supreme Court by special leave against this award failed. Subsequently, 44 of the workmen, who got the award in their favour filed applications before the State Government for recovery of the benefits due to them in terms of the award, as just stated, and, under Sub-section (2) of Section 33C of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act"), the State Government specified the second Labour Court (Respondent No. 2) as the Labour Court authorised to compute, in terms of money, the benefits due to the workmen and forwarded the applications of the workmen to the Labour Court for "necessary action" (vide Government letter dt. November 9, 1960, in Ann. A to the appellant's petition under Article 226].

3. The appellant raised several objections as to the jurisdiction of the Labour Court to make the computation on such reference from the State Government but the Labour Court, overruling the objections of the appellant, made its order computing the benefits recoverable from the appellant and that order, dated 19-2-62. is at Ann. E

4. Aggrieved by this order of the Labour Court, the appellant filed its petition under Article 226 of the Constitution urging that the impugned order of the Labour Court was without jurisdiction, on grounds which will be stated presently. This petition having been dismissed by Banerjee, J., overruling the objections raised by the appellant, the appellant has preferred this appeal, urging the same grounds, namely.

(a) That the State Government has no jurisdiction to refer to the Labour Court a matter as to the computation of the benefits due on an award, which is governed by Sub-section (2) of Section 33C;

(b) That the Labour Court has no jurisdiction to make such computation under Sub-section (2) of Section 33C unless the workmen concerned directly apply to the Labour Court, and that neither an application in this behalf made to the State Government nor a written statement filed by the Union representing the workmen filed before the Labour Court can give jurisdiction to the latter to make a determination under Sub-section (3) of the Section.

5. The questions appear to be concluded against the Appellant by the decision of a Division Bench of this High Court in the *The Indian Iron and Steel Co. Ltd. and Another Vs. Treogi Nath and Others*, . Nevertheless, we would give reasons of our own in view of the fact that there are some Single Judge decisions to the contrary which have not been expressly overruled by the Division Bench, in the aforesaid case.

(6) Sub-sections (1) and (2) of Section 33C of the Act, which are material, are as follows-

"(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, 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)". On behalf of the Appellant it has

been contended that the two sub-sections of the section provide for two different classes of cases:

(a) Where an award provides for the payment of money to a workman by an employer, the procedure to be adopted for the recovery of money is laid down in Sub-section (1) but

(b) Where under the award the workman is entitled to some benefit which is not computed in money by the award itself, the procedure to be adopted for the computation of such benefit in terms of money as well as its recovery is provided in Sub-section (1). It is contended by Mr. Dutt, for the Appellant, that Sub-section (1) expressly lays down that an application has to be made to the appropriate Government by the workman, and that if such Government is satisfied from the application that money is due to the applicant, it shall issue a certificate for recovery of the money as an arrear of land revenue. But, under Sub-section (2), it is contended, the Government has no other function than to specify the Labour Court which would have jurisdiction to make the computation referred to in this Sub-section. Hence, if the Government receives an application from a workman, under Sub-section (2), and refers it for disposal to a Labour Court, such act of the Government would be ultra vires.

7. This contention cannot, however, be accepted for a number of reasons:--

The Labour Court is not a Court of general jurisdiction to which the parties concerned may resort as a matter of course. The jurisdiction of a particular Labour Court to exercise the powers under Sub-section (2) of Section 38C depends upon the specification of such Court, under this provision, by the appropriate Government, which in the case before us, is the State Government. The State Government does not appear to have specified any particular Labour Court having jurisdiction to entertain all cases under Sub-section (2), by any general notification, as in *Bombay v. Abdul Rahaman v. R.N. Kulkarni* AIR 1902 Bom 287. The specification must, therefore, be made only by an ad hoc authorisation of a particular Labour Court for the determination of the money equivalent, in each case as may be brought before the State Government, requiring such specification under Sub-section (2).

8. The State Government might have laid down the procedure to be followed under Sub-section (2) inasmuch as Sub-section (2) specifically empowers the Government to make rules relating to the determination under this Sub-section, apart from its general rule-making powers u/s 38(2)(a) relating to the "powers and procedure" of Labour Courts. But at the material time, and prior to 1963, the State Government had made no rules regulating the procedure under Sub-section (2).

9. There is nothing to debar the State Government to exercise its power to "specify", under Sub-section (2), by ad hoc notifications, since Section 14(1) of the General Clauses Act, 1897, provides that when where any power has been conferred by any Central Act, such power "may lie exercised from time to time as

an occasion arises", "unless a different intention appears", and no such different intention appears in the impugned provision.

10. It, therefore, the State Government is to make its specification with respect to the particular claim made by a workman, how is the State Government to make such specification unless the workman first approaches in Government with its claim and requests that the Government do specify a Labour Court for the purpose of determining the claim in terms of money. It would be absurd to think that the workman would first make an application to any Labour Court of his choice and then that Labour Court would refer the matter to the State Government in empower itself.

11. It is true that it is only by a notification of May 16, 1963, that the State Government has made Rules regulating the procedure to be followed, u/s 33C(2), requiring that the workman concerned shall make an application to the State Government to specify the Labour Court. But the absence of such Rule at the material time in the case before us does not make any difference.

12. It is to be noted that it is the jurisdiction of the Labour Court which is limited by Sub-section (2) and not that of the Government. Under that Sub-section, the only function that the Labour Court has to discharge is to determine the quantum of the benefit, in terms of money. The Government has not only to specify the Labour Court to make such determination, but also to direct the recovery of the money. Hence, it cannot be said that it would be without jurisdiction for the Government to entertain an application from the workman containing the claim, to forward that application to the Court specified by it, and ultimately to direct recovery after the determination is made by the Court so specified.

13. In *Ram Sankar v. State of West Bengal* (1962) 4 FLR 169 (Cal) Banerjee, J., (sitting singly), however, expressed the contrary view that under Sub-section (2) of Section 33C, the State Government has no power to refer the matter to the Labour Court. In coming to this conclusion, his Lordship relied upon the view expressed by P. B. Mukharji, J., in *Rifle Factory Co-operative Society v. The Fourth Industrial Tribunal, West Bengal* AIR 1959 Col 849. The observation of P. B. Mukharji, J., however, relates to a different question, with which we are not concerned in this case, namely, whether when a specific sum of money was claimed by a workman under Sub-section (1) of Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the Government had any jurisdiction to convert such application into an application for computation of a benefit under Sub-section (2) of that section and then refer it to the Tribunal. The observations of P. B. Mukharji, J., were no authority for the proposition that in the absence of rules relating to Sub-section (2), the Government could not entertain an application for computation of money benefit, and then refer it for disposal to the Tribunal. Hence, the decision of Banerjee, J. is not supportable on the authority of the decision of P. B. Mukharji, J., aforesaid.

14. Apart from that, a crucial feature which distinguishes Sub-section (2) of

Section 33C of the Act before us from Sub-section (2) of Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is that under the latter provision, the Industrial Tribunal which is to make the determination is certain, namely, that very Tribunal which had made the award under which the benefit is claimed so that the procedure which can be reasonably envisaged is by way of execution before that Tribunal. But under Sub-section (2) of Section 33C of the Act of 1947 the Government definitely comes into the picture because unless it specifies the particular Labour Court there is no Court to which the workman can approach, and if the Government can make its specification only if the workman moves it, it is not possible to hold that where the application of the workman is forwarded by the Government to the Labour Court specified by itself, the order of the Govt. would be without jurisdiction. This aspect of the matter was not noticed by Banerjee, J. in the case of Ram Sankar 1962-4 FLR 1G9 (Cal) (ibid.) as well as of Biswanath v. II. R. Deb. (1962) 5 FLR 52, (Cal) where the earlier case was simply followed. For the reasons given by us, we would respectfully dissent from the view taken by Banerjee, J. in these two cases.

15. The second branch of Mr. Dutt's argument is that even though the Government may have jurisdiction to refer a claim for a benefit under sub-s. (2) to a Labour Court, the Labour Court has no jurisdiction to proceed with the determination unless the workman claimant makes a separate application before the Labour Court.

16. Under the new Rule 74, inserted in May, 1963, of course a separate application in this behalf has to be made before the Court, in the form prescribed had the Rules been framed earlier, these proceedings,--arising out of uncertainty,--could have been obviated. But at the time material in the case before us, there were no such rules and there is nothing in Sub-section (3) of Section 33C itself to indicate that even though an application containing the necessary particulars has already been forwarded to the State Government and that is before the Labour Court, a further application has still to be made before the Court to give it jurisdiction. On the other hand, while the word "application" is mentioned in Sub-section (1) that is absent altogether from Sub-section (2). In this case, before the Labour Court the workman made an application or written statement through their Union (Ann. B). It is contended by Mr. Dutt that Section 36(1) of the Act enables worker to be represented by their trade union in a proceeding under the Act but this provision would not extend to an initial application by which a proceeding is started. We do not consider it necessary to determine this question in this case since we are of the opinion that where a proper application is already before the Labour Court, the Court would not be without jurisdiction to proceed under Sub-section (2) of Section 33C, if a separate application is not filed before the Court by the workmen, individually.

17. All the points taken by Mr. Dutt having failed, this appeal fails and is dismissed, but we make no order as to costs.

Bachawat, J.

18. I agree.