
(2008) 09 OHC CK 0077
In the Orissa High Court

Orissa State Cashew Development Corporation Ltd. APPELLANT
Vs
Presiding Officer and Another RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (2009) 107 CLT 142 : (2009) 120 FLR 671 : (2009) 2 LLJ 356 :
(2008) 2 OLR 939

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Judgement

S.C. Parija, J.—This writ application has been filed by the management challenging the order dated 12.8.1997 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Misc. Case No. 77 of 1993, filed u/s 33-C(2) of the Industrial Disputes Act (for short the "I.D. Act") by the workman, opposite party No. 2, in allowing the said misc. case and directing the petitioner-management to pay an amount of Rs. 25,035.51 towards the dues of the workman concerning break days and weekly off days.

The main contention of Sri B.M. Patnaik, learned Senior Counsel for the petitioner is that since the entitlement of the workman, opposite party No. 2 is a disputed one and the petitioner-management having disputed before the Labour Court regarding the entitlement and claim of the workman, the Labour Court had no jurisdiction to adjudicate the claim of the workman in an application u/s 33-C(2) of the I.D. Act and therefore the impugned order of the Labour Court is not sustainable in law. In this regard, it is submitted that the very basis of the claim or the entitlement of the workman concerning break days and weekly off days having been disputed by the management and 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 u/s 33-C(2) of the I.D. Act.

2. Accordingly, it is submitted that the Labour Court had no jurisdiction to first

decide the workman's entitlement and then proceed to compute the benefits so adjudicated on that basis in exercise of its power u/s 33-C(2) of the I.D. Act.

On a perusal of the written statement dated 18.11.1993 (Annexure-4) filed by the petitioner-management before the Labour Court, it reveals that no such plea regarding maintainability of the workman's application u/s 33-C(2) of the I.D. Act has been raised. Further, from the written argument dated 13.1.1997 (Annexure-5) submitted by the petitioner-management before the Labour Court in the said proceeding, it appears that no such plea regarding maintainability of the proceeding has been raised even during arguments.

3. It is for the first time such a plea regarding maintainability of the workman's application u/s 33-C(2) of the I.D. Act has been taken in the writ application before this Court.

Learned Counsel for the workman, opposite party No. 2 submits that no such plea having taken by the management before the Labour Court either in the written statement or even in the written note of argument or any submission in that regard having been made at the time of hearing of the application, the same cannot be permitted to be raised for the first time before this Court in the present writ application. However the management having not taken any such plea before the Labour Court, even at the stage of argument, the workman had no opportunity to meet the same and even the Labour Court had no scope to adjudicate upon the same.

4. Sri Patnaik, learned Senior Counsel appearing for the petitioner-management submits that since the plea regarding the maintainability of the application u/s 33-C(2) of the I.D. Act is a pure question of law relating to the authority and jurisdiction of the Labour Court to entertain such an application of the workman, the same goes to the root of the matter and therefore there is no legal bar for raising such a plea in this writ petition and the same cannot be rejected merely on the ground that such plea has not been raised earlier before the Labour Court.

Considering the submissions of the learned Counsel for the parties, I am of the considered view that the plea raised by the petitioner-management, in the present writ petition, regarding maintainability of the proceeding u/s 33-C(2) of the I.D. Act before the Labour Court is a pure question of law and since the same goes to the root of the matter, the petitioner cannot be denied the right to raise such plea for the first time before this Court.

5. However, as the plea with regard to maintainability of the application of the workman u/s 33-C(2) of the I.D. Act has not been raised before the Labour Court, which is the Court of first instance, it had no opportunity to adjudicate upon the same and therefore, in the interest of justice it is just and proper that the matter should be remitted back to the Labour Court for fresh adjudication, giving liberty to the petitioner management to raise such plea.

Accordingly, the impugned order of the Labour Court, Bhubaneswar dated

12.8.1997 passed in I.D. Misc. Case No. 77 of 1993 is quashed and the matter is remitted back to the Labour Court for reconsideration, after providing reasonable opportunity of hearing to the parties.

6. It is open for the petitioner-management to raise all such plea, including the plea regarding maintainability of the proceeding u/s 33-C(2) of the I.D. Act and the workman, opposite party No. 2 is at liberty to rebut the same by adducing evidence, if necessary. It is made clear that this Court has not expressed any opinion with regard to the merits of the plea raised by the petitioner and accordingly the Labour Court is free to consider the same and dispose of the matter in accordance with law.

As the proceeding before the Labour Court is of the year 1993, it shall take effective steps for disposal of the matter, as expeditiously as possible, preferably within a period of three months from the date of receipt of the copy of this order.

The writ application is accordingly disposed of.