

(1994) 09 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6865 of 1993

Pradip Lamp Works and Another

APPELLANT

Vs

The Certificate Officer and Others

RESPONDENT

Date of Decision : 13-09-1994

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3(3), 3(6), 7
Industrial Disputes Act, 1947 — Section 2, 33C(1), 33C(2)

Citation : (1994) 2 PLJR 716

Hon'ble Judges : S.N. Jha, J; Narayan Roy, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyaya and S.P. Tiwary, for the Appellant; S.N. Waris, for State, K.P. Yadav and Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The question for consideration in this writ petition is whether the Certificate Officer other than the Collector of the district is competent to recover the money found due to the workman from the employer in a proceeding u/s 33C(2) of the Industrial Disputes Act (in short, "the Act"). The facts of the case lie in a narrow compass.

2. At the instance of Respondent No. 3, Govind Lal Das, the State Government made reference of the dispute as to whether he (Govind Lal Das) comes under the category of "workman" as defined in Section 2(s) of the Act and if, so, whether termination of the services from May 7, 1985 by the management was proper and justified and, in the event the termination is found to be improper and unjustified, whether he is entitled to reinstatement and/or other relief. The Labour court, Patna by its award dated November 29, 1988 held that Respondent No. 3 was workman within the meaning of the Act. His termination was legal and unjustified and he is entitled to reinstatement with full back wages. The Petitioner challenged the award by way of a writ petition which was dismissed. Respondent No. 3 in the meantime, filed two applications, bearing Misc. Case No.

18 of 1989 and Misc. Case No. 19 of 1989, for computation of salary for different periods u/s 33C(2) of the Act. The Labour Court, Patna by its orders dated April 2 and April 3, 1991 held that he was entitled to recover arrears of salary amounting to Rs. 82,500/- and Rs. 23,100/- i.e. Rs. 1,05,600/- in all. The Additional Secretary, Department of Labour, Employment and Training, Government of Bihar by his letter dated March 22, 1993 sent requisition to the Collector, Patna for recovery of the aforesaid sum. The Collector, Patna appears to have sent the aforesaid requisition to the Certificate Officer, Patna City on the basis of which Certificate Case No. 2 of 1993-94 was registered on April 26, 1993. The Certificate Officer issued notice of the proceeding to the Petitioners u/s 7 of the Bihar Public Demands Recovery Act. It appears from the order-sheet of the proceeding that after the warrant of arrest was issued on their failure to either pay the amount or file any objection, they filed an application on September 7, 1993 making an offer to pay the dues in instalments. Prior to this, they had already filed this instant writ petition on July 15, 1993. The Certificate Officer allowed the prayer directing the Petitioners to deposit sum of Rs. 5,000/- every month. However, after making some deposits the Petitioner did not pay the rest.

3. Mr. S.J. Mukhopadhyaya, learned Counsel for the Petitioners, has submitted that any money found due to a workman from an employer, amongst other, under an award of the Labour Court or Industrial Tribunal can be recovered by the Collector of the district alone. The Certificate Officer has no jurisdiction or competence to make recovery and that being so the entire proceeding before the Certificate Officer, Patna City in Certificate Case No. 2/93-94 is without jurisdiction.

4. The provisions regarding recovery of money found due to a workman from an employer under an award of settlement etc. are contained under Sub-section (1) of Section 33C of the Act, the relevant part of which 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 Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs 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.

The term "Collector" has not been defined in The Industrial Disputes Act. Under the General Clauses Act, 1897, the term is defined to mean "the Chief Officer Incharge of the Revenue administration of a district". It is a matter of common knowledge that the Chief Officer incharge of the revenue administration of a district is none else than the Collector of the District. As per the definition of the

term "Certificate Officer" u/s 3(3) of the Bihar Public Demands Recovery Act, 1914, "Certificate Officer" means "a Collector, a Sub-divisional Officer, any officer appointed by the Collector with the sanction of the Commissioner, to perform the functions of a Certificate Officer". Thus, the Certificate Officer may not necessarily be the Collector himself, he may be any other officer duly appointed to perform the functions of the Certificate Officer. On this reasoning a single judge of the Calcutta High Court in the case of T. Sanjeevi v. State of West Bengal AIR 1966 Calcutta 58 held that any certificate issued to the Certificate Officer (not being the Collector of the District) was not in conformity with Section 33C(1) of the Industrial Disputes Act and could not be acted upon.

5. It may be noted here that in the above mentioned case the certificate was sent to the Certificate Officer, 24 Parganas and not to the Collector, 24 Parganas by the State Government. The facts of the instant case, however, are different. As indicated above, the requisition in the prescribed form was sent by the Additional Secretary of the Department to the Collector, Patna on March 22, 1993. The requisition was sent in Form No. II appended to 2nd Schedule of the Public Demands Recovery Act. In the column meant for indicating the nature of the public demand, it was stated that the money was due to Respondent No. 3 and recoverable u/s 33C(1) of the Industrial Disputes Act.

6. From a bare perusal of the provisions of Section 33C(1), quoted hereinabove, two things, inter alia, are obvious; one that the certificate is to be issued to the Collector and two, that the money is to be recovered in the same manner as an arrear of land revenue. Item 3 of Schedule I to the Public Demands Recovery Act read with Section 3(6) of the Act lays down that any money which is declared by any law for the time being in force to be recoverable as an arrear of land revenue is "public demand". In view of these provisions there cannot be any doubt that the amount has to be recovered as a "public demand", that is, in accordance with the provisions of the Public Demands Recovery Act. In other words, while the Collector of the district is the appropriate authority to whom the certificate is to be sent, so far as the manner of recovery is concerned, the same procedure as prescribed in the Public Demands Recovery Act for recovery of arrear of land revenue i.e. public demand has to be followed.

7. The Public Demands Recovery Act is a special Act which has been enacted for recovery of certain types of dues. It provides a special procedure and hierarchy of authorities for the purpose. It would be anomalous to hold that a Certificate Officer (other than Collector) otherwise competent to effect the recovery of any "public demand" cannot do so in respect of any money payable to a workman from an employer under an award etc. although the same is recoverable as a public demand. There is nothing in the section to suggest that the actual steps for recovery must also be taken by the Collector himself. The expression "shall proceed to recover the same" should be understood as referable to the manner or procedure for recovery. That is to say, it is not open to the authority to recover the amount by following any other procedure than the one prescribed for

recovery of arrear of land revenue i.e. public demand under the Public Demands Recovery Act. According to me, it is open to the Collector to either take the steps for recovery himself or to have the recovery made through an officer who is otherwise competent to do so. Any other interpretation would render the provisions of the Public Demands Recovery Act superfluous. In any view, if two views are possible, the view which is harmonious with and gives effect to the provisions of a special statute should be preferred. As admittedly the Certificate Officer, Patna City to whom the certificate was sent by the Collector is otherwise competent to effect recovery of "public demands" under the Public Demands Recovery Act and has followed the procedure prescribed under that Act, I do not find any error of jurisdiction. In my opinion, on the facts of the case, there has been no violation of the provisions of Section 33C(1) of the Industrial Disputes Act.

8. The question framed is answered thus. The certificate in respect of any money found due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A and V-B of Industrial Disputes Act has to be sent to the Collector of the district. It is the Collector alone who is competent to recover the amount. He may, however, do it by himself or through any other officer who is otherwise competent to recover "public demands". In any event, the same procedure as applicable to recovery of arrear of land revenue i.e. public demand under the Public Demands Recovery Act of the State has to be followed for effecting the recovery.

9. In the result, this writ application is dismissed. There will be no order as to costs.

Narayan Roy, J.

10. I agree.