(1992) 07 KL CK 0025

In the High Court Of Kerala

Case No : Original Petition No. 4112 of 1992-M

P.V. Sreedharan Nair APPELLANT

Vs

Spl. Deputy Tahsildar and Others RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)

Citation : (1993) 1 LLJ 851

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : P.V. Narayanan Nambiar, for the Appellant; S. Vijayan Nair, for Respondent Nos. 1, 3 and 6 and K. Balachandran, Advocate, for the Respondent

Judgement

K.A. Nayar, J.—The Original Petition is filed to quash the revenue recovery proceedings initiated against the petitioner by Exhibits P-10 to P-13. The petitioner was the managing partner of a partnership which was operating a bus bearing Registration No. KLN 708. Admittedly, respondents Nos. 4 and 5 are workers employed by the partnership. That partnership was dissolved by a decree passed in a suit filed by one of the partners, viz., the brother of the petitioner as O.S. No. 192 of 1979 in the Court of Subordinate Judge, Thalassery. Preliminary and final decrees have been passed. In the final decree passed, there is a provision for payment of arrears of salary to the employees in connection with the management of the bus up to the date of court auction. Before the partnership was dissolved, the petitioner purchased the bus in court auction on October 24, 1988, for an amount of Rs. 80,000. The purchase consideration was deposited in court and, thereafter, the petitioner was operating the bus service. When the dissolution suit was pending, i.e., from April 1, 1984, to October 31, 1988, the Receiver appointed by the court was operating the bus service. The bus was put in possession of the petitioner on November 1, 1988, and thereafter, the petitioner was running the service and operating the bus. It was found that the operation of bus service was not profitable and, therefore, the petitioner retrenched the workmen on December 3, 1990, including respondents Nos. 3, 4 and 5. A dispute arose regarding payment of the amount due to the workmen which ended in a settlement, i.e., Exhibit P-4. On March 26, 1991, the Conciliation Officer issued a notice convening a conciliation conference of the parties to the dispute relating to bus No. KLN 708 and denial of employment to three workers. The conference was proposed at 3 p.m. on April 2, 1991, in the office of the District Labour Officer, Cannanore. The fourth respondent has produced the notice as Exhibit R-4 (a). A meeting was held on April 2, 1991. On that day, it is stated that the parties have agreed to have a bipartite discussion and to adjourn the conciliation conference. The parties discussed the matter on April 12, 1991, in the presence of Sri Achuthan Nair, Advocate, for the petitioner. Parties arrived at a tentative settlement on that day. That has been produced by the fourth respondent and marked as Exhibit R-4(b). That shows the petitioner is a signatory to that agreement. By that agreement the amount due to respondents Nos. 4 and 5 has been quantified at Rs. 15, 898 and Rs. 9,515, respectively. By Clause (5) of that agreement, it was agreed that the said agreement was only a provisional agreement and a further agreement will be entered into in the presence of the District Labour Officer on April 17, 1991. Accordingly, a conciliation settlement was arrived at which is evidenced by Exhibit P-4 dated May 20, 1991. Serial Nos. 2 and 5 in Exhibit P-4 are respondents Nos. 4 and 5. The amount due to them have been quantified and mentioned. In Exhibit P-4, it is stated that an amount of Rs. 2,002 should be deducted from the amount due to the fourth respondent and an amount of Rs. 1,640 to be deducted from the amount due to the fifth respondent. Without deduction the amount comes to Rs. 25,413 and after deduction, the amount comes to Rs. 21,771. This amount had to be paid, under the agreement, to respondents Nos. 4 and 5. Since the amount has not been paid, the parties approached the District Labour Officer u/s 33-C(1) of the Industrial Disputes Act and the District Labour Officer issued notices, Exhibits P-5 and P-6, both dated September 4, 1991, to the petitioner to make the payment. Instead of paying the amount, the petitioner, through his counsel, filed objection stating that the settlement has been entered into by force and it is not binding on him. It is further stated that settlement of liabilities due to the workmen is provided for in the final decree in I.A. No. 1433 of 1983 in O.S. No. 192 of 1979 and, therefore, the same will have to be collected by the workmen from the Court of Subordinate Judge, Tellicherry. But nevertheless, revenue recovery proceedings have been initiated and the petitioner filed Exhibits P-14 and P-15 objection before the District Collector. It is in the above background the petitioner approached this Court challenging the revenue recovery proceedings.

2. The amount is due under the settlement and u/s 33-C(1) that can be recovered by way of revenue recovery proceedings. u/s 33-C(1) of the Industrial Disputes Act, 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 settlement itself is not in challenge before me. The contention of the petitioner is that only the Government can recover the amount and the District Labour Officer has no jurisdiction. This contention is not tenable as the power of delegation has been given u/s 39 and notification authorising the District Labour Officer also has been issued. Section 39 authorises the appropriate Government, by notification in the Official Gazette, to direct that any powers exercisable by it under the Industrial Disputes Act or the Rules made thereunder can be exercised by such officer or authority subordinate to it as may be specified in the notification. Notification No. 48174/L2/61-5/HLD dated July 4, 1961, published in the Kerala Gazette dated July 18, 1961, directed that the powers exercisable by the Government of Kerala under Sub-section (1) of Section 33C of the Industrial Disputes Act shall be exercisable also by the Labour Commissioner, Deputy Labour Commissioners and the District Labour Officer. In this case, the certificate has been issued by the District Labour Officer. Hence, the contention that the District Labour Officer cannot issue the certification but only the Government can do so cannot be countenanced.

3. The petitioner also contended that there must be an enquiry regarding the amount due as the petitioner has challenged the existence of the agreement itself. Jurisdiction u/s 33-C(1) is to issue the certificate and that jurisdiction cannot be taken away by conjuring up a dispute regarding the settlement. The conciliation settlement has been signed by the petitioner and before that there is a provisional settlement as well. Amount due from the petitioner has been quantified and, therefore, a dispute at the belated stage to oust the jurisdiction of the competent authority, the Government, or the delegated authority, cannot be countenanced. The Government''s jurisdiction u/s 33-C(1) cannot be ousted by a mere plea at a belated stage that the settlement arrived at is not genuine or binding. There is also a contention that the conciliation agreement has not been signed by the Conciliation Officer. From the agreement, it is seen that the Conciliation Officer has signed the agreement and there was no contention that the agreement has not been countersigned by the Conciliation Officer in Exhibits P-7, P-8 and P-15 objection of the petitioner. In any case there was a provisional agreement preceding the conciliation settlement to which the petitioner is a signatory. Therefore, he cannot contend that the amount is not properly quantified or that the amount is not actually due. It is also contended that the amount now in dispute is deposited in the Subordinate Judge''s Court, Tellicherry, in O.S. No. 192 of 1979 and that can be attached and recovered. Respondents Nos. 4 and 5 are not parties in the suit. Agreement can be enforced u/s 33-C(1) and that can be done by way of certificate issued and that is what has been done in this case. Exhibits P-10 to P-13 are, therefore, not vitiated. If the petitioner

has to make the payment, it is for him to recover the amount from the Subordinate Judge''s Court, in O.S. No. 192 of 1979.

4. Petitioner further contended that Section 33-C(1) of the Industrial Disputes Act itself is not applicable to the case in question. If money is due to respondents Nos. 4 and 5, they ought to have filed an application u/s 33-C(1) and only thereafter recourse could be had to Section 33-C(1). This contention is also without any merit. Section 33-C(1) is wider in scope and that applies where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the money due will have to be computed u/s 33-C(1) and only thereafter recovery proceedings could be had u/s 33-C(1). But, when the money is due to the workman, it is Section 33-C(2), that is applicable. In other words, Section 33-C(1) is applicable when the workman is entitled to receive any money or benefit which is capable of being computed in terms of money. There is no dispute in this case that there was a settlement and under that settlement, the amounts to be paid to respondents Nos. 4 and 5 have been computed. On a reading of Section 33-C(1), it will be seen that the money due under a settlement or an award or under the provisions of Chapter V-A or V-B to the workman can be recovered by the modality mentioned in Section 33-C(1). Reference to Chapters V-A and V-B would show that they relate to lay-off and retrenchment compensation. If the fact of lay-off or retrenchment is not disputed and there is no dispute relating to wages and length of service of the workman, the money due can be ascertained by applying simple arithmetic. There is no adjudication involved in such a case. This contention also has been considered by the Supreme Court in the decision reported in The Sawatram Ramprasad Mills Co. Ltd. Vs. Baliram Ukandaji and Another, The Supreme Court held that (p 45):

"The next contention is that the claim for lay-off is not a claim for money due, because calculations have to be made before the money due can be found. This argument has been considered on more than one occasion and it was rejected recently by this Court in Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, It is not essential that the claim which can be brought before the Government or its delegate u/s 33-C(1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself about the exact amount and then lake action under that section. In the present case the dates of layoff are known and each workman will show to the Second Labour Court that he is qualified to receive compensation for lay-off. That will be shown from the muster-roll which the employer is required to maintain and it will then be a simple arithmetical calculation which, in our judgment, Section 33C permits to be made. If there is any question whether there was lay-off or not, the Labour Court will decide it. This argument, therefore, has no force."

On the basis of the settlement, the Government, therefore, rightly entered its satisfaction that money is due to the workman in question. The satisfaction even by applying an objective standard cannot be considered as vitiated. The claim of the workmen for amount fixed under the agreement cannot be defeated by a mechanical denial of the agreement at a belated stage without any bona fides.

5. Lastly, it is contended that there is a dispute relating to the amount mentioned in Exhibits P-10 to P-13. The dispute relates to the quantum. The total amount demanded is Rs. 25, 413. Out of this, an amount of Rs. 3,642 will have to be deducted and the certificate, therefore, is valid only for the amount of Rs. 21,771. It is made clear that the first respondent and the sixth respondent can collect only that amount from the petitioner and they are, therefore, restrained from collecting any amount from the petitioner in excess of Rs. 21, 771. This is so declared. In order to avail of the amount in deposit from the Subordinate Judge''s Court, Tellicherry, as per the final decree in I.A. No. 1433 of 1983 in O.S. No. 192 of 1979, the petitioner prays that he may be given some time for making the payment. The request is reasonable. Revenue recovery proceedings, therefore, shall be kept in abeyance for a period of three months from today for the said purpose.

6. The Original Petition is disposed of as above.