

**(2010) 05 DEL CK 0083**

**In the Delhi High Court**

**Case No : Writ Petition (C) 741 of 2004**

Ruchika Cables Pvt. Ltd.

APPELLANT

Vs

The Secretary (Labour) and Another

RESPONDENT

**Date of Decision : 14-05-2010**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 17B, 18(3), 2, 33A, 33C(1)

**Citation : (2010) 4 LLJ 726**

**Hon'ble Judges : Rajiv Sahai Endlaw, J**

**Bench : Single Bench**

**Advocate : Harvinder Singh, for the Appellant; Manish Malhotra, for R-2, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

Rajiv Sahai Endlaw, J.—The petitioner M/s. Ruchika Cables (P) Ltd. having its address at B-48, G.T. Karnal Road Industrial Area, New Delhi - 110 033 (B-48) instituted this writ petition for quashing and setting aside of the letter dated 19th September, 2003 issued by the office of the Labour Commissioner, Govt. of NCT of Delhi issuing a certificate for recovery of Rs. 85,756.50p from the petitioner in implementation of the award dated 24th September, 1996 of the Labour Court in I.D. No. 377/1992 between the management of M/s. Ruchika Cables (P) Ltd. having its address at B-40, G.T. Karnal Road Industrial Area, New Delhi - 110033 (B-40) and its workman Sh. Sohan Rai (respondent No. 2). The petitioner also seeks a declaration that it is not liable to pay any amount to the respondent No. 2 workman in implementation of the award aforesaid.

2. This Court vide ex parte order dated 3rd February, 2004 which continues to be in force, stayed the recovery pursuant to the recovery certificate aforesaid against the petitioner.

3. The respondent No. 2 workman had raised a dispute about the termination of his employment by the management of M/s. Ruchika Cables (P) Ltd. having its

address at B-40. Reference dated 6th May, 1992 was made to the Labour Court. The Labour Court, in the award dated 24th September, 1996, has recorded that the management was duly served with the notice sent, by refusal report dated 23rd November, 1992 of the process server and upon failure to appear had been proceeded against ex parte. The Labour Court vide ex parte award dated 24th September, 1996 held the termination of employment of the respondent No. 2 workman to be illegal and found him entitled to reinstatement with full back wages and continuity of service. The said award was published on 23rd December, 1996.

4. The petitioner herein filed an application dated 20th January, 1997 before the Labour Court stating that it had received the aforesaid ex parte award on 13th January, 1997 and on inspection of the file had learnt that it had been proceeded against ex parte on the basis of a report dated 23rd November, 1992 of refusal of notice issued by the Labour Court. The petitioner in the said application averred that prior to the receipt of the ex parte award it had no knowledge/notice of the proceedings and had not been served with the notice thereof and had never refused to receive the summons. The petitioner by the said application applied for setting aside of the ex parte award. Though in the affidavit accompanying the application the address of the petitioner was given as that of B-48 but in the application no ground was urged that the dispute raised by the respondent No. 2 workman was with M/s. Ruchika Cables (P) Ltd. having address at B-40 and not with the petitioner having address at B-48. It was also not urged that owing to the respondent No. 2 workman having given the wrong address, the report of refusal was incorrect. The petitioner along with the application for setting aside of the ex parte award also applied for stay of operation of the award.

5. The aforesaid applications of the petitioner remained pending because the Presiding Officer of the Labour Court had resigned and the vacancy had not been filled up.

6. The respondent No. 2 workman applied for implementation of the award aforesaid and a notice dated 19th February, 1997 was issued by the Asstt. Labour Officer to M/s. Ruchika Cables (P) Ltd. at the address of B-40. The petitioner then filed W.P.(C) No. 1037/1997 in this Court for setting aside of the ex parte award dated 24th September, 1996. The file of the said writ petition has been requisitioned in this Court and some of the facts collated hereinabove are on the basis of the said record. The petitioner in W.P.(C) No. 1037/1997 inter alia stated that the respondent No. 2 workman had procured refusal report on the basis whereof the petitioner had been proceeded ex parte by the Labour Court, by giving the address of the petitioner as of B-40 instead of B-48. The award was challenged on other grounds and on merits also.

7. W.P.(C) No. 1037/1997 came up for admission before a Single Judge of this Court on 11th March, 1997 when it was dismissed with the following orders:

No ground to interfere in view of the order of the Presiding Officer dated 6th

December, 1994 wherein it was mentioned that management refused to take service of notice. No other ground has been argued.

Dismissed.

8. Aggrieved from the dismissal in limine of the W.P.(C) No. 1037/1997, the petitioner preferred an LPA No. 95/1997 before the Division Bench of this Court. One of the grounds urged in the said LPA was that the ex parte award dated 24th September, 1996 was a nullity as the correct address of the petitioner was B-48 and not B-40 and as such any summons refused to be received by the occupier of the premises B-40 could not be deemed to be a valid service on the petitioner. In the memorandum of appeal it was further pleaded that as per the law laid down in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, and in *Metal Fabricators (India) Ltd. v. B.D. Gupta* 1975 (2) Lab.IC 1707 the award was a nullity.

9. The Division Bench of this Court requisitioned the file of the Labour Court. In the order dated 22nd September, 1997 issuing notice of the appeal, it is noted that even in the order of reference to the Labour Court the address of the petitioner was given as of B-40 whereas the correct address of the petitioner was of B-48; it was also recorded that the record of the Labour Court contained Registered AD covers which appeared to have been not sent even to the address of B-40. The Division Bench prima facie forming an opinion that service had not been effected by the Labour Court on the petitioner, also stayed the operation of the award aforesaid. The respondent No. 2 workman filed an application u/s 17B of the ID Act in the LPA. The LPA was admitted for hearing on 18th January, 2000 and interim order made absolute. The Division Bench vide order dated 31st August, 2000 directed the petitioner to file an affidavit indicating as to whether at any point of time the respondent No. 2 workman was working under it or not and whether there was any other M/s. Ruchika Cables (Pvt.) Ltd. operating at any time at the address of B-40. In response thereto an affidavit dated 12th September, 2000 came to be filed by Shri Ajit Prasad, Managing Director of the petitioner. In the said affidavit, it was stated that the petitioner was incorporated in 1988 and has its registered office at the address of B-48 and factory at the address of B-48 and never had any factory/establishment or office at B-40. It was also stated in the said affidavit that no industry by the name of M/s. Ruchika Cables (Pvt.) Ltd. had ever been situated at the address B-40 but other industries were functioning from B-40 and with which the petitioner had no concern whatsoever. It was further stated in the said affidavit that the respondent No. 2 workman Sohan Rai had been employed in the factory of M/s. Ruchika Cables (Pvt.) Ltd. at B-48 on purely temporary basis for a couple of months and had voluntarily resigned from service on 14th August, 1991. A copy of the resignation letter was filed along with the affidavit. It was further stated in the said affidavit that while the demand notice and other correspondence on the record of the Labour court were addressed to the petitioner at the address of B-48, but the summons were sent at the address of B-40 and the award was

thus a nullity and could not be legally enforced against the petitioner which had no connection with the factory/establishment situated at B-48 (supposedly incorrect for B-40).

10. However immediately after the filing of the affidavit aforesaid the petitioner withdrew the LPA on 15th September, 2000. The order on the LPA file on that date is as under:

Learned Counsel for the appellant says that he wants to withdraw the appeal. Dismissed as withdrawn.

11. It appears that the respondent No. 2 workman thereafter applied u/s 33C(1) for implementation/enforcement of the award and informed the Labour Commissioner that the address of M/s. Ruchika Cables (P) Ltd. was changed from B-40 as given in the award to B-48. This led to the issuance of the recovery certificate dated 19th September, 2003 (supra) impugned in this writ petition. The contention of the petitioner in the present writ petition is twofold. Firstly, it is contended that the Labour Commissioner in exercise of powers u/s 33C(1), before issuing any recovery certificate ought to give a notice to, and hear the party to be affected therefrom and cannot straightaway issue a recovery certificate. Reliance in this regard is placed on *Colcom Plastic Ltd. v. Union of India* 1997 1 CLR 744 (Delhi) (DB). It is further contended that the affidavit/application probably filed by the respondent No. 2 workman stating that the address of M/s. Ruchika Cables (Pvt.) Ltd. has been changed from B-40 as given in the award to B-48 has not been served on the petitioner. It is thus contended that the issuance of recovery certificate is liable to be struck down on this ground alone.

12. It is next contended that the award against M/s. Ruchika Cables (P) Ltd. at the address of B-40 cannot be enforced against the petitioner at the address of B-48. It is contended that the recovery certificate issued to the petitioner at the address of B-48 is thus wholly without jurisdiction. It is pleaded that the LPA aforesaid was withdrawn because it was the contention of the petitioner then also that the award could not be enforced against it as it was not a party to the reference to the Labour Court; the party to the reference being the industrial establishment situated at B-40 and not the industrial establishment at B-48 against which the award was being illegally enforced. Though the petitioner has in the present writ petition disclosed about the earlier W.P.(C) No. 1037/1997 and LPA No. 95/1997 but did not disclose about the filing of the affidavit dated 12th September, 2000 (supra) before the LPA court. A copy thereof was filed by the respondent No. 2 workman along with his counter affidavit. It is also the contention of the counsel for the respondent No. 2 workman that the petitioner had, in the memo of parties in W.P.(C) No. 1037/1997, given its address as that of B-40. The counsel for the respondent No. 2 workman handed over in the court photocopies of memo of parties in the earlier writ petition as well as copies of the affidavits filed in support of the earlier writ petition where in fact the petitioner has given its address as that of B-40. The counsel for the petitioner was asked to

check in his file also and the copies in his file also contained the address of the petitioner as that of B-40. The counsel for the petitioner states that the same must be an error. However a perusal of the file of W.P.(C) No. 1037/1997 requisitioned in this Court shows that though the address was originally typed as B-40 but was changed by hand to B-48.

13. The counsel for the petitioner has contended that the reference of the dispute raised by the respondent No. 2 workman was against the industry at the address of B-40 and not the industry at the address of B-48 as the petitioner is. Reference is invited to Section 2(g) of the ID Act defining "employer", Section 2(j) defining "industry", Section 2(k) defining "industrial dispute" and to Section 2(ka) defining "industrial establishment or undertaking". It is further contended that u/s 18(3) an award is binding or enforceable inter alia on the parties to an industrial dispute. It is contended that the party to the industrial dispute was the industrial establishment at B-40 and not the petitioner which is the industrial establishment at the address of B-48. It is further contended that it is not the case of the respondent No. 2 workman that the petitioner earlier had its office at B-40 which has been changed to B-48; the respondent No. 2 workman has not placed any material on record in this regard either. On inquiry, the counsel for the petitioner urges that in Industrial Law it is not a company such as petitioner M/s. Ruchika Cables (Pvt.) Ltd. is, which is an employer, but it is the industrial undertaking/establishment of such company which is the employer of the workman. It is argued that without a place of work, there can be no establishment which can be an employer. Reliance in this regard is placed on S.K.G. Sugar Ltd. Vs. Sri Ali Hassan, Chairman, Industrial Tribunal, Bihar and Others,

14. The definition of "employer" in Section 2(g) is only in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government or by or on behalf of a local authority. The petitioner company is neither. Section 2(k) defines "industrial dispute" as a dispute inter alia as one between employer and workman. I entertain no doubt whatsoever in my mind that with respect to the industry/business/establishment/undertaking of the petitioner, in which the respondent No. 2 workman was admittedly employed, it was the petitioner company which was the employer and not the industry or establishment or undertaking or factory which in fact is not a juristic person and is not even an entity in law. A juristic person cannot segregate itself from its business, trade or undertaking. Though Section 2(s) defines "workman" as one employed in any industry but employment in an industry being run/operated/carried on by the petitioner would be employment in the petitioner. The definition of "industrial establishment or undertaking" in Section 2(ka) has no relevance in this regard.

15. I have enquired from the counsel for the petitioner whether there was/is any other company by the name of M/s. Ruchika Cables (Pvt.) Ltd. The answer is in the negative. In the affidavit dated 12th September, 2000 filed in the LPA also

the petitioner had stated that no company in the name and style of M/s. Ruchika Cables (Pvt.) Ltd. was carrying on business at B-40 at any point of time. Moreover in view of the admission of the petitioner in the said affidavit that it had privity with the respondent No. 2 workman, there is no manner of doubt whatsoever that the dispute raised by the respondent No. 2 workman was against the petitioner and the award made was also against the petitioner. The petitioner cannot be permitted to take advantage of the error, if any, in the respondent No. 2 workman giving the address of the petitioner as that of B-40 instead of B-48. The said error was a pure case of mistake as the petitioner has also made in the memo of parties and affidavit in the earlier writ petition as well as in the affidavit dated 12th September, 2000 (*supra*) filed in the LPA.

16. Reliance on S.K.G. Sugar Ltd. (*supra*) is misconceived. In that case dispute was raised against the "Management of Gaya Sugar Mills Ltd." At the time of reference of dispute the company Gaya Sugar Mills Ltd. was in liquidation and the Liquidator had put a lessee into management of the Sugar Mill of Gaya Sugar Mills Ltd. and in which Sugar Mill the worker was employed. However, the industrial adjudicator issued notice only to the Liquidator who failed to appear and an *ex parte* award made. However, on the basis of said proceedings, application u/s 33A of ID Act was instituted against the lessee S.K.G. Sugar Ltd. S.K.G. Sugar Ltd. filed writ petition for quashing of the said proceedings u/s 33A. It was in this factual backdrop that it was held on construction of the reference in that case that it was between the then management of the Sugar Mill and the workman; that the management then was of S.K.G. Sugar Ltd. and not of Gaya Sugar Mills Ltd. which was made the party. The observations in the judgment made in this factual context have no relevance to the dispute in hand.

17. The counsel for the petitioner has also relied upon Madan Pal Singh Vs. State of U.P. and Others, to contend that an award in that case with the wrong name of the workman was held to be a nullity so the principle is sought to be extended to a case of wrong address as in the present case. However, in Madan Pal Singh (*supra*) the stage was of the challenge to the award and not the stage of enforcement. The petitioner also challenged the award in the present case in the earlier round of litigation on the ground of wrong address. However the petitioner gave up that challenge. The petitioner cannot now re-litigate when the award is being enforced.

18. The question which arises is whether owing to the said mistake, the petitioner can be permitted to wash its hands off from the liability under the award and whether it can be held that the award is not against the petitioner. The answer is obviously in the negative. The only effect of the mistake committed by the respondent No. 2 workman in giving the address of the petitioner as that of B-40 instead of B-48 was to entitle the petitioner to have the said award set aside. The petitioner did apply to the Labour Court within 30 days of publication of the award for the said purpose. The petitioner in the said application admitted that the award was against it; had it not been so, there

would have been no occasion for having it set aside. When the applications for setting aside the ex parte award could not be taken up by the Labour Court, the petitioner filed the earlier writ petition in this Court and being unsuccessful therein took the matter in appeal. The Appellate Court was seized of the problem as to whether the award was liable to be set aside or not. As is evident from the order sheet, the petitioner nevertheless chose to unconditionally withdraw the said appeal. The effect of such withdrawal is not only that the award has attained finality but also that the petitioner gave up the challenge to the award.

19. Upon the same being put to the counsel for the petitioner, he contends that the application for setting aside of the ex parte award, earlier writ petition as well as the LPA were all misconceived and ought not to have been filed. I am not convinced with the said reasoning. The petitioner rightly or wrongly, treating the award as against itself, challenged the award not only on the ground of being ex parte but also on merits. The seeds of the arguments now of the award being a nullity for the reason of being without service of notice on the petitioner are also found in the memorandum of LPA. The only effect of the unconditional withdrawal of the LPA can be that the petitioner gave up all the said grounds. The petitioner did not reserve its right to urge that the award is a nullity and / or not an award against it and / or not binding on it at the time of withdrawing the appeal. The petitioner cannot be permitted to re-litigate as is being done by way of present petition.

20. The explanation given by the counsel for the petitioner for withdrawal of the LPA cannot be accepted. There is nothing in the record of the LPA to suggest that the petitioner was reserving its right to contest the award in the event of the same being enforced against it at the address of B-48. The counsel for the respondent No. 2 workman has rather contended that the petitioner withdrew the LPA to then avoid an order u/s 17B of the Act.

21. This Court cannot act on conjectures. If that is to be the mode, it appears that the petitioner balked on being directed to file the affidavit in the LPA; the LPA was withdrawn soon after the said direction and filing of the affidavit. In fact it was withdrawn on the date when the affidavit came on the record of the LPA. If one were to conjecture, one can also think that the petitioner did not want the matter to be investigated further and had something to hide and thus gave up the challenge to the award.

22. Not only did the petitioner withdraw the LPA but it appears that the applications filed before the Labour Court for setting aside of the ex parte award were also not pursued. The petitioner certainly cannot, by way of this writ petition, be allowed to litigate what it had been doing earlier and which was given up. In fact the effect of withdrawal of the LPA is that the order in the earlier writ petition upholding the award has become final and in view of that order the present round of litigation is clearly an abuse of process of the court.

23. As far as the argument of the counsel for the petitioner of the Labour

Commissioner in exercise of power u/s 33C(1) of the Act being required to issue notice and in support of which argument the judgment in Colcom Plastic Ltd. (supra) has been cited, the said defect, if any, in the procedure followed by the Labour Court is now not relevant when the present petition has remained pending for the last over six years to the detriment of the respondent No. 2 workman and when the counsels have been heard fully.

24. The counsel for the petitioner also sought to argue that an award made without issuance of notice to the employer is a nullity. Post hearing, the copies of judgments in Grindlays Bank Ltd. (which as aforesaid was referred to in the memorandum of LPA also) and Mahakal Automobiles and Another Vs. Kishan Swaroop Sharma, have been handed over in the Court. M/s Mahakal Automobiles (supra) is not a judgment on the said proposition, it held an execution sale to be vitiated in the absence of notice. A stray observation in Grindlays Bank Ltd. cannot also be said to support the said proposition. Else in Nirmaljit Singh and others Vs. Harnam Singh (dead) by LR's. and others, such contention was repelled by the Supreme Court. It was held that that so long as a decree stands it is binding on parties and cannot be ignored for the reason that no notice of the proceeding in which decree was passed was served. It was further held that the party averring so is required to take out proceedings to have such decree set aside. The present however is not a case of the award without issuance or service of notice. The Labour Court did issue a notice to the petitioner and proceeded ex parte against the petitioner on the basis of a refusal report. It has not been contended that the Labour Court was not entitled to so proceed ex parte. The petitioner challenged the report of refusal in the applications for setting aside of the ex parte award, earlier writ petition and LPA aforesaid. With the withdrawal of the LPA, the said challenge has come to an end. The petitioner cannot re-litigate on that aspect. The judgments relied upon by the petitioner are found to be irrelevant.

25. The courts See K.K. Modi Vs. K.N. Modi and Others, have held re-litigation to be an abuse of the process of the Court. The counsel for the respondent No. 2 workman has sought to invoke principle of constructive res judicata by relying on M/s. Jhalani Tools (India) Ltd. Vs. Union of India and others, The writ petition is therefore mala fide and liable to be dismissed with exemplary costs.

26. The counsel for the petitioner has post hearing also filed copy of judgment in State of Haryana and Others Vs. M.P. Mohla, highlighting that if a subsequent cause of action arises in implementation of a judgment, a fresh writ petition may be filed. However, the present is not a case of fresh cause of action. The petitioner challenged the award under enforcement on the same grounds in the earlier writ petition which was dismissed and which order attained finality on withdrawal of the LPA.

27. However, the fact remains that the petitioner, by so abusing the process of this Court has yet again succeeded in holding up the enforcement of the award. The Supreme Court, in Abhimanyoo Ram Vs. State of U.P. and Another, and also

recently in Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., has held that the court at the time of final disposal must balance the equities flowing from the interim order and that a litigant cannot retain the benefit of an interim order. In the present case owing to the interim order the recovery certificate of Rs. 85,756.50p has remained stayed. The counsel for the petitioner during the course of arguments has suggested and hinted that the petitioner which is a private limited company has since closed its business. From the said statement, it appears that if the respondent No. 2 workman were to be left to enforce the recovery certificate which was stayed by interim order in this petition, it may again be a long drawn process. The petitioner having been found to have obtained interim order in a petition which itself has been found in abuse of the process of the court, ought to be directed to pay the said sum of Rs. 85,756.50p to the respondent No. 2 workman together with interest at 9% per annum from the date of the interim stay i.e. 3rd February, 2004 till the date of payment. It is further noticed that the award was for reinstatement with back wages. On reinstatement, the respondent No. 2 workman would have been entitled to wages from the petitioner after the date of the said recovery certificate also. The counsel for the respondent No. 2 workman states that the claim therefore was not made in view of the interim order in the present petition.

28. In the aforesaid circumstances-

- a. The writ petition is dismissed with costs of Rs. 20,000/- payable by the petitioner within six weeks hereof by Pay Order in the name of the respondent No. 2 workman.
- b. The interim order is vacated and the petitioner is directed to, within six weeks hereof, pay the sum of Rs. 85,756.50p together with interest as aforesaid to the respondent No. 2 workman by Pay Order in the name of the respondent No. 2 workman
- c. The petitioner and the respondent No. 2 workman are directed to appear before the concerned Labour Court on 5th July, 2010. The Labour Court to determine the further amounts due to the respondent No. 2 workman from the petitioner under the award, after giving opportunity of hearing to both the parties. The said determination be done within six months from the date the parties first appear before the Labour Court.
- d. The Directors of the petitioner at the time of institution of the petition shall be personally liable for compliance with the aforesaid directions.
- e. The record of W.P.(C) No. 1037/1997 and LPA No. 95/1997 requisitioned be retained along with the file of this petition only for future reference.