
(2010) 08 OHC CK 0064
In the Orissa High Court
Case No : Writ Appeal No. 87 of 2008

Samaj, represented by the Joint General Manager	APPELLANT
Vs	
The Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Citation : (2010) 08 OHC CK 0064

Hon'ble Judges : V. Gopala Gowda, C.J.;Indrajit Mahanty, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Indrajit Mahanty, J.—In the present writ appeal, the Appellant "The Samaja" has sought to challenge the judgment dated 11.03.2008 passed by the Learned Single Judge, dismissing the writ application registered as O.J.C. No. 10101 of 1996, filed by the Appellant (as the Petitioner) and while refusing to interfere with the matter directed the Petitioner-management to pay a sum of Rs. 1,85,362 to the Opp. Party-workman as directed by the labour Court. The Learned Single Judge further directed that if the Petitioner-management fails to pay the said amount within the three months from the date of that order, it shall be liable to pay interest on the said amount " 6% per annum till realization.

2. Shorn of unnecessary details, it appears from the impugned judgment that the Respondent-workman who was working as a Journalist under the Appellant-management raised a dispute claiming for financial dues commensurate wages, DA, A.D.A., interim relief and house rent in terms of Palekar Award, 1990, including bonus besides other dues. The said dispute was referred by the State Government Under Section 10(1)(d) read with Sub-section 5 of Section 12 of the Industrial Disputes Act to the Industrial Tribunal for adjudication.

3. The Tribunal after discussing the evidence in extenso by his Order Dated 12.11.1990 passed the following award.

(1) There existed relationship of employer and employee between the

management and the workman; -

(2) The status of the workman was that of a Special CorRespondent as envisaged under the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;

(3) Being a Working Journalist, the terms of the Palekar Award were application to the workman; and

(4) The workman was entitled to the financial benefits under the Palekar Award as claimed.

4. The Appellant-management sought to challenge the said Award passed by the Industrial Tribunal before this Court, by filing a writ application which was registered as O.J.C. No. 299 of 1991. A Division Bench of this Court rejected the said writ application declining to interfere with the finding of the Industrial Tribunal and holding that the Palekar Award is applicable to the Respondent-workman and that he is entitled to the financial benefits as per the Award of the Industrial Tribunal.

5. It is most important to note here that no challenge to the said judgment of the Division Bench of this Court was ever made by the Appellant-management. After dismissal of the writ application as stated hereinabove, the Respondent-workman filed a petition Under Section 33C(2) of the Industrial Tribunal Act before the Labour Court with a prayer to compute the amount payable as per the Award and for issuance of a direction to the management to pay the said amount. The said application of the workman was registered as I.D. Misc. Case No. 37 of 1991. The Labour Court after considering both, oral and documentary evidence available before it came to the conclusion that, as the Industrial Tribunal had already held that the workman was a special corRespondent of "The Samaja" (working Journalist), he was entitled to the pay, wages and other benefits as per the Palekar Award for the period from 11.10.1982 to 31.12.1989 and also held that the workman was entitled to get Rs. 2,09,520 deducting Rs. 24, 158 therefrom (which amount he had already received from the management) the Labour Court directed the management to pay a sum of Rs. 1,85,362 within four months from the date of Award failing which the said amount shall carry interest " 6% per month till realization.

6. That order of the Labour Court came to be challenged before the Learned Single Judge in OJC No. 10101 of 1996 which came to be dismissed by the judgment dated 11.3.2008 and the said judgment is the subject matter of challenge in the present writ appeal. Although various arguments were advanced by the Learned Counsel for the Appellant seeking to challenge the judgment of the Learned Single Judge, the main issue raised by the Appellant is that the order of the Learned Single Judge suffers from legal lacuna inasmuch as, the Respondent-workman claimed to be a working journalist and such claim of a working journalist is required to be adjudicated under the provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act,

1955 and not under the provisions of the Industrial Disputes Act, 1947.

This issue was raised by the Appellant before the Learned Single Judge who relying upon the judgment of the Delhi High Court in the case of *Statesman Ltd. v. Lt. Governor of Delhi* 1975 (II) LLJ 38 has held that neither Section 17 nor any other provision of the Working Journalists Act, debars a working journalist to approach the Labour Court or Tribunal under the I.D. Act. Reliance was also placed on a judgment of Andhra Pradesh High Court in the case of *Business Manager, Andhra Printers Ltd. Vs. Industrial Tribunal-Cum-Labour Court and Another*, in which it was observed that if a newspaper employee claims certain monetary benefits flowing from the provisions of the Working Journalists Act, there is no reason why the same cannot be recovered Under Section 33C of the I.D. Act even though the liability is denied by the employer.

Learned Counsel for the Respondent-workman vehemently contended that the Appellant-management had, in fact, not challenged the judgment of the Division Bench of this Court passed in OJC No. 299 of 1991, in which similar issues had been raised and thereafter rejected, it ought not to be permitted to raise such objections once again under the guise of challenging the order of the Labour Court in a proceeding Under Section 33C(2) of the I.D. Act.

7. We have perused the judgment of the Learned Single Judge as well as the judgment of the Division Bench of this Court referred to herein above. Admittedly, in the present appeal, the Respondent-workman had raised an industrial dispute, which had been referred to the Industrial Tribunal and the Award passed by the Tribunal had been affirmed by the Division Bench of this Court in OJC No. 299 of 1991. Thereafter, since the Appellant-management did not comply with the direction of the Industrial Tribunal, the Respondent-workman was compelled to approach the Labour Court by initiating a proceeding Under Section 33C(2) which was registered as I.D. Misc. Case No. 37 of 1991 and the final order passed in the said Misc. case has been challenged by the Appellant-management before the Learned Single Judge in OJC No. 10101 of 1996, which again came to be dismissed by the judgment dated 11.3.2008, which is the subject matter of challenge in the present appeal.

8. The scope and ambit of a proceeding Under Section 33C(2) of the I D Act has been well settled by the various judgments of the Hon''ble Supreme Court. In the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, the Hon''ble Supreme Court dealt with -the question of maintainability of the proceedings Under Section 33-C(2) of the Act in a claim made by the workmen on the basis of the Sastry Award. While the management disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act, it was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36A. This objection was rejected and the Supreme Court pointed out differences in the scope of Section 36A and Section 33C(2) indicating that the

distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2). It was further held that the power of the Labour Court in a proceeding Under Section 33-C(2) is akin to that of an "Executing Court" and the Labour Court is competent to interpret the award or settlement on which a workman bases his claim Under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. This decision clearly establishes the fact that the Labour Court's power Under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement.

9. In the case of *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , the Hon'ble Supreme Court referring to the aforesaid Constitution Bench judgment in the case of *Central Bank of India (supra)* stated that the proceeding contemplated by Section 33-C(2) are analogous to an execution proceedings and the Labour Court, like the Executing Court in the execution proceedings is governed by the Code of Civil Procedure and would be competent to interpret the award on which the claim is based. This view of the Supreme Court is reiterated in several judgments thereafter including the case of *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , in which the propositions on the question as to the scope of Section 33-C(2) deducible from the earlier decisions were summarized as follows:

(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognized the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33A in 1950 and Section 33C in 1956. These two Sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.

(3) Section 33-C which is in term similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision.

(5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(7) Though the Court did not indicate which cases other than those under Sub-section (1) would fall under Sub-section (2), it pointed out illustrative cases which would not fall under Silo-Section (2), viz., cases which would appropriately be adjudicated Under Section 10(1) or claims which have already been the

subject matter of settlement to which Sections 18 and 19 would apply.

(8) Since proceedings Under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an Executing Court, the Labour Court like the Executing Court in execution proceedings governed by the Code of Civil Procedure, is competent Under Section 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

It is also important to take note of the judgment of the Supreme Court in the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, wherein the Supreme Court referring to the earlier decisions on the question as to the scope of Section 33-C(2), came to hold that the same is in the nature of execution proceeding.

10. In view of the aforesaid principle of law deducible from the decisions referred to above, it is clear that, where the very basis of the claim or the entitlement of the workmen to a certain benefit is based upon an earlier adjudication of entitlement, the benefit claimed is, therefore, clearly within the scope of a proceeding under Section 33-C(2) of the Act. This was the view expressed by the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, . the said principle clearly applies to the facts of the present case since in the present case, the Respondent-workman's claim has been adjudicated by the Industrial Tribunal in I.D. Case No. 18 of 1989 by passing Award dated 12.11.1990. The said Award was the subject matter of challenge in OJC No. 299 of 1991 and the Award was affirmed by the Division Bench of this Court and no challenge was made by the Appellant-management to the said judgment of the Division Bench and thereby the Award had attained a finality. When the Appellant-management did not comply with the direction of the Industrial Tribunal, the workman was compelled to approach the Labour Court by filing a petition Under Section 33-C(2) of the Act in I.D. Misc. Case No. 37 of 1991. The Labour Court once again took evidence and concluded that a sum of Rs. 1,85,362.00 is payable to the workman. After such determination, the Management without complying with the directions of the Labour Court, challenged the same before the Learned Single Judge in OJC No. 10101 of 1996. After dismissal of the said writ application, the judgment passed by the Learned Single Judge is challenged in the present appeal.

11. In our considered view, all the contentions raised by the Learned Counsel for the Appellant-management have been answered by the earlier Division Bench judgment in OJC No. 299 of 1991. The scope and ambit of Section 33-C(2) of the I.D. Act has been well settled by the Supreme Court in catena of decisions, The rights/claims of the Respondent-workman have already been determined by referring the matter to the Industrial Tribunal, resulting in passing of an Award which has been affirmed by a Division Bench of this Court. Challenge having not

been made to that judgment of the Division Bench, the Appellant-Management is not at liberty to question the same in any other latter proceeding in order to deny the benefit granted to the workman.

12. On a reading of the judgment impugned and considering the nature of the prayer made, we are of the considered view that the contentions raised are wholly beyond the scope and ambit of Section 33-C(2) of the I.D. Act, since it is well settled that the same is in the nature of execution proceeding and therefore, does not merit any further consideration.

13. Accordingly, the writ appeal being devoid of any merit, stands dismissed. The impugned judgment of this Court and the order of the Labour Court are affirmed and the Appellants should comply with the directions issued by the Labour Court, within a period of four (4) weeks from today.