

(2009) 07 DEL CK 0392

In the Delhi High Court

Case No : Writ Petition (C.) No. 8520 of 2009

Shri Om Prakash

APPELLANT

Vs

Government of N.C.T. and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 25T, 25U, 29, 33(1), 33C(1)

Citation : (2009) 123 FLR 500

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Sanjoy Ghose, for the Appellant; N.K. Jha, for the Respondent

Judgement

S.N. Aggarwal, J.—The petitioner, Shri Om Prakash, has filed this writ petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to respondent Nos. 1 & 2 (District Collector (East) and Labour-cum-Conciliation Officer in GNCT of Delhi) to perform their statutory duties to secure the implementation of the award dated 05.05.2000 passed in his favour by the Labour Court No. I in ID No. 136/1996. The petitioner has prayed for the following reliefs:

(i) issue a direction, order or writ in the nature of mandamus to the Respondent Nos. 1 & 2 to perform the statutory duties to secure the implementation of the award dated 05.05.2000 passed by the Labour Court No. I in I.D. No. 136/1996;

(ii) Issue a direction, order or writ in the nature of mandamus to the Respondent Nos. 1 to implement and execute the Recovery Certificate dated 20.08.2002 issued by the Respondent No. 2 u/s 33-C(1) of the the Industrial Disputes Act (Annexure P-4);

(iii) Issue a direction, order or writ in the nature of mandamus to the Respondent No. 2 to initiate prosecution of the Respondent No. 3 u/s 29 r/w Section 25T and U of the the Industrial Disputes Act;

(iv) Impose exemplary costs upon the Respondents for its inaction.

(v) Issue any other writ or order or direction that may be deemed fit and proper under the circumstances of the case.

2. Heard.

3. The ex parte award dated 05.05.2000 in ID No. 136/1996 was passed by the Industrial Adjudicator in favour of the petitioner whereby he was directed to be reinstated by the management of M/s. Asha Metals (respondent No. 3 herein). This award has remained unimplemented till date.

4. The award of reinstatement was to be implemented by respondent No. 3 being the management of the petitioner. It is contended that the Labour-cum-Conciliation Officer (respondent No. 2) has failed to initiate appropriate proceedings u/s 29 read with Section 25U and T of the Industrial Disputes Act, 1947 which is alleged to be unfair labour practice under the law.

5. The recovery certificate pursuant to award dated 05.05.2000 in ID No. 136/1996 was issued by the GNCT of Delhi on 20.08.2002, a typed copy of which is at page 17 of the Paper Book. The grievance of the petitioner in this petition is that the respondents No. 1 & 2 who are the authorities responsible for executing the recovery certificate have not performed their statutory duties as the said recovery certificate has remained unexecuted till date. Further grievance of the petitioner is that in case the recovery certificate dated 20.08.2002 could not be executed then it was the duty of respondent Nos. 1 & 2 to initiate proceedings for the prosecution of the management and since the respondent Nos. 1 & 2 have failed either to execute the recovery certificate or initiate prosecution proceedings against the management, it is alleged that they have not performed their statutory duties cast upon them under the provisions of Industrial Disputes Act, 1947.

6. I have given my anxious consideration to the above argument advanced on behalf of the petitioner in the light of the facts that are available on record. I do not find any violation of statutory duties on the part of respondent Nos. 1 & 2. It is not the case of the petitioner that he had furnished the details of movable or immovable assets of the management through which the recovery certificate dated 20.08.2002 could have been executed by the concerned authorities in the Government of NCT of Delhi. Any recovery to which a workman is entitled pursuant to an award passed in his favour by the Industrial Adjudicator, can be made by taking recourse to the procedure followed for recovery of arrears of land revenue. This is as per the provisions of Section 33(C)(1) of the Industrial Disputes Act, 1947, which reads as under:

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 VA or Chapter VB] 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 certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

7. Arrears of land revenue are recovered by attachment of land which is subject to levy. In case of land subject to levy, the land is readily available for attachment and the arrears of land revenue can be recovered by attaching and selling the land subject to levy. However, in case of an industrial award by the Industrial Adjudicator in favour of the workman, the recovery to which a workman is entitled under the award cannot be made even after issuance of recovery certificate unless the details of movable and immovable assets owned by the management is made known to the concerned authorities responsible for execution of the recovery certificate. In case the workman supplies the details of movable and immovable assets of the management and if still the concerned authorities responsible for execution of the award do not take steps for effecting recovery then certainly they are guilty of not performing their statutory duties cast upon them u/s 33(c) of the Industrial Disputes Act, 1947. The prosecution of the management for non-compliance of the award can be initiated only in case if the complete particulars with address of the management are given by the workman to the concerned authorities responsible for execution of the recovery certificate.

8. In the present case, the petitioner nowhere states that he had given either the complete particulars with the address of the management or the details of the movable and immovable assets owned by the management to the concerned authorities of the Government of NCT of Delhi who were responsible for executing the recovery certificate dated 20.08.2002. Therefore, prayer made by the petitioner in this petition cannot be granted. However, liberty is granted to the petitioner to furnish the complete particulars of the management and the details of its assets to the concerned authorities as early as possible and in case the details in this regard are provided by the workman, then the respondent Nos. 1 & 2 are directed to take steps for execution of the recovery certificate dated 20.08.2002 as expeditiously as possible preferably within eight weeks of receipt of details from the petitioner.

9. In view of the above, this writ petition stands disposed of.