

(2003) 09 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 5460 of 2003

Shri Vaibhav Laxman Suravkar and Shakeel Ahmed Farooqui **APPELLANT**

Vs

Ultra Drytech Engineering Ltd. and Shri K.N. Mishra, **RESPONDENT**
Production Manager, Ultra Drytech Engg. Ltd.

Date of Decision : 25-09-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 50

Citation : (2004) 1 ALLMR 601 : (2004) 2 BomCR 185 : (2004) 2 MhLj 378

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.M. Oak and Ambar Joshi, for the Appellant; P.N. Anaokar and R.M. Pande, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Learned Counsel appearing on behalf of the Respondents waives service. By consent taken up for hearing an final disposal.

2. A complaint was instituted by the Petitioners under Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. On 22nd June 2001 the complaint was allowed by the Industrial Court at Thane in so far as items 5 and 9 were concerned. The order of the Industrial Court was confirmed by this Court and it is an admitted position that the Petition which was filed by the Respondents to challenge the order of the Industrial Court came to be dismissed. While allowing the complaint under Items 5 and 9 of Schedule IV, the Industrial Court issued the following directions:

"It is held that the respondents committed unfair labour practice under items 5 and 9 of Schedule IV of the Act. Respondents shall cease and desist from committing such unfair labour practice. Respondents are to pay 50% wages to

the complainants and employees referred in the complaint during the period of lay off i.e. from January 2000 till restarting of the factory i.e. July 2000, if they are not paid till today.

Respondent Nos. 1 and 2 are to allow the complainants and the employees referred in annexure "A", except the employees at Sr.Nos. 15, 24 & 29 to resume duties forthwith and also to pay their wages from July 2000 till resuming duties."

3. The order of the Industrial Court directing the Respondents to pay 50% of the wages to the complainants and to the employees referred to in the complaint from January to July 2000 and to thereafter continue the payment of wages until the employees were taken back on duty was admittedly not complied with. The Petitioners thereupon moved an application u/s 50 of the Act before the Industrial Court for the issuance of a recovery certificate. That application has been dismissed by an order dated 20th June 2003 which is called into question in these proceedings.

4. Under the order of the Industrial Court for the period January to July 2000, payment had to be made of 50% of the wages. After July 2000, until the workmen resumed duties, they were to be paid their wages. The Industrial Court recorded that in November 2001, the workmen were taken back on duty. The workmen worked for two months after which a lock out was declared.

5. The impugned order of the Industrial Court records that the workmen produced before the court in evidence a statement, Exh.U-8, containing a detailed calculation sheet for every employee in which the amounts due and outstanding from the employer had been set out. The Industrial Court noted that (i) there was no effective challenge to the calculation; (ii) no defect was shown in the calculation; (iii) the mode of calculation has not been challenged. However, the defence that was taken up on behalf of the Respondent-employee was that the Industrial Court while disposing of the complaint had not itself calculated the amount and there was a direction to work out the amount. The employer claimed that because it was unable to pay the dues, it had not calculated the amount due and payable to the workmen. The only defence was that an application u/s 50 was not maintainable as Section 50 would apply to a situation wherein the amount that is due and payable to the workmen is reflected in the order of the Industrial Court. The Industrial Court accepted this defence relying upon a judgment of a Learned Single Judge of this Court, R.J. Kochar J. in *V. Ramanathan v. Hindustan Lever Ltd.*, 2002 I CLR 231.

6. In assailing the correctness of the finding which has been arrived at by the Industrial Court, Counsel appearing on behalf of the Petitioners submitted that the view adopted by the Labour Court is ex-facie in the teeth of the law laid down by the Supreme Court. Counsel urged that the judgment of the Single Judge in Ramanathan's case is contrary to the judgment of the Supreme court to which a reference will be made and, in any event, is distinguishable on facts. Counsel further urged that the Learned Single Judge had in fact taken a different

view in *Surendra Industries Ltd. v. A.L. Alaspurkar*, 2002 II CLR 736, where a direction had been issued to the Industrial Court to issue a recovery certificate u/s 50 after computing the dues payable under his order. On the other hand, Counsel appearing on behalf of the Respondents supported the view taken by the Industrial Court, placing reliance on the judgment in *Ramanathan's* case (*supra*). Counsel urged that the regulations which have been framed under the Act, particularly Form 24 thereunder, would demonstrate that Section 50 applies only to a situation where a specified amount is held to be due and payable.

7. While dealing with the submissions which have been urged on behalf of the parties, it would at the outset, be worth-while to compare the provisions of Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 with those of Section 33-C(1) of the Industrial Disputes Act, 1947 which are *pari materia*. These convictions are as follows:

"Section 50 Recovery of money due from employer:- Where any money is due to an employee from an employer under an order passed by the Court under chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the Court 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:

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

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

"Section 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 VI or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or in the case of 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:

Provided that every such application shall be made within one year from the date on which 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."

A comparison of the two provisions would demonstrate that the difference between the two provisions is that Section 50 applies where the money is due to the employee from an employer under an order passed by the court under Chapter VI of the State Act while Section 33C(1) deals with a situation where the money due to an employer is under a settlement, award or under Chapter VA or VB of the Central Act. Moreover, whereas the power u/s 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 can be exercised by the Labour or Industrial Court, the power u/s 33C(1) of the Industrial Disputes Act, 1947 is vested in the appropriate Government.

8. The provisions of Section 33C(1) of the Industrial Disputes Act, 1947 came up for consideration before a Bench of five Learned Judges of the Supreme Court in *The Sawatram Ramprasad Mills Co. Ltd. Vs. Baliram Ukandaji and Another*, . In that case, proceedings were commenced u/s 33C(1) and an objection was taken to the jurisdiction of the Labour Court to hear and decide the claim. One of the contentions was that a claim for lay off compensation is not a claim for money due because calculations have to be made before the money due can be found. The Supreme Court rejected that submission with the following observations:

"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 take action under that section. In the present case the dates of lay off 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."

9. The judgment of the Supreme Court establishes the principle of law that before a claim can be brought u/s 33C(1), it need not always be for a predetermined sum. The Supreme Court noted in that case that the dates of lay off were known and each workman was in a position to demonstrate before the Labour Court that he was qualified to receive the compensation for lay off. That would also be reflected in the muster roll that every employer is required to be maintained. A simple arithmetical calculation was all that was necessary which Section 33C(1) permits to be made.

10. The judgment of the Supreme Court is clearly attracted to a case such as the present. In the present case, the order of the Industrial Court of 22nd June 2001 holds that the employees are entitled to 50% of their wages between January

and July 2000 and that thereafter, from July 2000 until the employees resume their duties, they would be entitled to the payment of their wages. There is no dispute in the present case about the wages; about the date from which the payment is to be made and the date upto which the payment was liable to be made. The date on which the employees were allowed to resume their duties is admitted. The Industrial Court was manifestly in error in coming to the conclusion that the provisions of Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 would not be attracted. The Industrial Court noted in its order that there was no effective challenge to the statement of computation which had been submitted for and on behalf of the workmen. The amount was not disputed, nor was the mode of calculation in dispute. The workmen had, it must be noted in the present case, not approached the Industrial Court in proceedings u/s 50 for an adjudication of their entitlement. Their entitlement had already been adjudicated upon in the order of 22nd June 2001 passed in the complaint of unfair labour practices which had been affirmed by this Court. All that remained was a simple arithmetical calculation.

11. Section 50 of the M.R.T.U. & P.U.L.P. Act, 1971 postulates a situation where any money is due to an employee from an employer under an order passed by the Court under Chapter VI of the Act. Chapter VI deals with unfair labour practices and there is no dispute about the fact that in this case, the order of the Industrial Court dated 22nd June 2001 held the employer guilty of an unfair labour practice. u/s 50 the employee or, in the event of the death of the employee, his assignee or heirs may make an application to the Court for the recovery of money due to him. If the Court is satisfied that any money is due, it has to issue a certificate for that amount to the Collector who shall proceed to recover the amount as arrears of land revenue. Section 50 is *pari materia* with Section 33C(1) of the Industrial Disputes Act, 1947. Save and except that (i) under the former the amount due is pursuant to an order of the Court under Chapter VI while under the latter it is under a settlement award or under Chapters VA or VB and (ii) under the former the computation is done by the Labour Court while under the latter by the appropriate government. Neither of those two differences would restrict the scope of Section 50 in comparison with Section 33C(1) or indicate that a Labour Court u/s 50 has a lesser power in a mere computation of the amount due than the appropriate government. An arithmetical exercise is no more alien to the Court u/s 50 than it is to the appropriate government u/s 33C(1).

12. In so far as the Industrial Disputes Act, 1947 is concerned, there is a well settled distinction in law between the provisions of Sub-section (1) and Sub-section (2) of Section 33C. Section 33C(1) deals with a situation where any money is due to a workman from the employer under a settlement, award or under the provisions of Chapters VA or VB. Section 33C(2) deals with a case 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. The distinction

between Sub-section (1) and (2) has been explained in a judgment of the Supreme Court in U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., thus:

"The legislative intention disclosed by Sections 33C(1) and 33C(2) is fairly clear. u/s 33C(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, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Where the workman who is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of more applies in that behalf the Labour Court as u/s 33-C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33-C(2) is wider than Section 33-C(1). Matters which do not fall within the terms of Section 33-C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33-C(2). If the liability arises from an award, settlement or under the provisions of Chapter V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim u/s 33-C(2) before the Labour court. Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon a reference, it would be straining the language of Section 33-C(2) to hold that the question whether there has been retrenchment may be decided by the Labour Court. The power of the Labour court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by virtue of Section 25-FF no liability to pay compensation has arisen, the Labour Court will be competent to decide the question. In such a case the question is one of computation and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workman have been retrenched and computation of the amount is subsidiary or incidental, in our judgment, the labour Court will have no authority to trespass upon the powers of the tribunal with which it is statutorily invested."

13. The same distinction has been noted in an earlier judgment of the Supreme Court in Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, in which the provisions of Section 6-H of the U.P. Industrial Disputes Act, 1947 came up for consideration (This judgment in Kays Construction was followed in Sawtram Ramprasad Mills which has been already noted earlier). In Kays Construction, the distinction between the expression money due and a "benefit" which is not money due but which can become so after the money equivalent is determined was explained thus:

"The contrast between "money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined

on the other, marks out the areas of the operation of the two sub-sections. ... In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money". The contrast in the two sub-section between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section." (emphasis supplied).

14. In the present case, the entitlement of the workmen is not in dispute. The entitlement had been adjudicated upon by the Industrial Court in its order dated 22nd June 2001. Under the order the workmen were entitled to 50% of the backwages from January 2000 till July 2000. From July 2000 until the date on which the workmen were permitted to resume duties they were entitled to wages. On behalf of the workmen evidence was adduced of one of the complainants, Vaibhav Laxman Suravakar, the First Petitioner herein. A statement of calculation was prepared, produced and marked in evidence as Exh.U-8. The workman deposed that the statement reflected the dues recoverable from the Respondents for each and every workman. The workman stated that the figure had been worked out in accordance with the order of the Court. During the course of the cross-examination, the workman was asked as to whether it was prepared by any Government Officer or by the Court to which the obvious answer was that it was not prepared by any Government Officer or by the Court. The workman stated that the calculation had been prepared both by the Learned Counsel as well as by the workmen themselves. The Learned Judge of the Industrial Court was justified in coming to the conclusion that there was no effective challenge to the statement which had been prepared on behalf of the workmen. A perusal of the evidence of the witness for the employer makes this position abundantly clear apart from the evidence of the workmen noted hereinabove. On behalf of the employer, its Managing Director gave evidence. The Examination-in-Chief merely contained a reference to the financial difficulty of the Company. There was absolutely no reference to the computation of dues made by the workmen, nor was any error pointed out therein. In paragraph 12 of the notes of evidence, the witness made the following material admission:

"It is true that from July 2000 to November 2001 or till these workmen were taken in service in December 2001, no wages were paid to them. ... We have not calculated the dues of these workmen for the said period. Amount is not worked out as we were not directed to work out. As the Company was unable to pay, the amount was not calculated."

The witness was specifically shown the statement at Exh.U-8. His only answer to

Exh.U-8 was that he is unable to say whether the workmen were entitled to the amount as he had not verified it. Exh.U-8 was marked in evidence on 11th February 2003. The Company's witness was examined and cross-examined on 11th March 2003. Despite the period which had elapsed in the interregnum, there was absolutely no objection in regard to the computation which had been made on behalf of the workman. The Industrial Court was entirely justified in coming to the conclusion that the computation which had been made on behalf of the workmen was not effectively challenged. Counsel appearing on behalf of the employer states that the computation is disputed in the Written Statement. A bald averment in the written statement that the computation was not correct, would not assist the employer since, admittedly, there was no objection to the statement either when the witness for the workmen was cross-examined or in the course of the examination of the witness for the employer.

15. The Industrial Court having arrived at the conclusion that the computation which has been made has not been challenged, rejected the application u/s 50 placing sole reliance upon the judgment of a Learned Single Judge of this Court in *V. Ramanathan v. Hindustan Lever Ltd.*, 2002 1 CLR 231. In that case, an application u/s 50 of the M.R.T.U. & P.U.L.P. Act, 1971 was filed by the workmen based upon an order passed by the Industrial Court in a complaint under the Act. The employer had been directed to take affirmative action for the purpose of implementing the provisions of an agreement of 1957 and a settlement of 1971 and to pay the amount that was due and payable within a period of three months to the workman. The order had been confirmed all the way upto the Supreme Court. Before the Industrial Court an objection was raised to its jurisdiction u/s 50 on the ground that (i) The concerned employees were employed outside the jurisdiction of the Court since they were located at Bhilai and Madras; (ii) Though the question of entitlement had been decided by the Industrial Court, no exact amount had been determined to be payable; and (iii) The person who had filed the application, had no locus to file it on behalf of the workmen. The Industrial Court held that triable issues were raised which required adjudication. According to the Industrial Court, the amounts were disputed and they were required to be determined. In this background, the Learned Single Judge held that there was no illegality in the order of the Industrial Court. In so far as the facts of the case were concerned, the Learned Single Judge held that the authority of the Petitioner had been questioned. The jurisdiction of the Industrial Court at Mumbai was challenged and moreover, it had been averred that the amounts had already been paid and that employees had settled their dues. It was in these facts that this Court rejected the Writ Petition filed by the workmen. Therefore, the facts of the case before this Court in *V. Ramanathan* case are clearly distinguishable. The Learned Single Judge then adverted to the provisions of Section 50 and held thus:

"What is the exact sum due and payable must be determined before resorting to Section 50 of the Act. It is not the function of the court u/s 50 to investigate what are the amounts due and payable. The Court u/s 50 must be told that the

arrears were already determined and they were a particular amount. Such Court cannot be called upon to determine and adjudicate any other question or any other triable issues."

16. Now, there can be no dispute about the principle that u/s 50, it would not be open to the Labour Court or the Industrial Court to adjudicate upon an entitlement for the first time, and the statement of law in the judgment in Ramanathan's case (supra) is correct so far as it reiterates that position. Ramanathan's case does not lay down a wider principle and indeed, it cannot be so construed having regard to the law laid down by the Supreme Court. Section 50 refers to a situation where money is due to an employee from an employer under an order passed by the Court under Chapter VI. If the entitlement of the employees has already been adjudicated upon and a simple arithmetical calculation is all that is required to be made, the workmen are entitled to move the Industrial Court u/s 50. The workmen do not forsake their remedy u/s 50 merely because an arithmetical calculation is still to be made and was not made in the order of which enforcement is sought. To hold that Section 50 would not apply merely because in the original order of the Labour or Industrial Court, a final computation has not been made would be to render the salutary provision of Section 50 nugatory. Such an interpretation cannot be adopted particularly since it is contrary to the plain terms of Section 50 and the interpretation placed on a similar provision by the Supreme Court. To recapitulate, therefore, the provisions of Section 50 of the Act can be availed of in a case such as the present where the entitlement of the workmen is not in dispute, where the period for which wages had to be paid was not in dispute, where the amount of wages is not in dispute and the only surviving question in that regard was an arithmetical calculation of the amount due and payable.

17. Counsel appearing on behalf of the Respondents urged that if this Court is inclined to take a view at variance with that of Kochar, J. In Ramanathan's case, it would be appropriate to refer the matter to a larger Bench. This course is not required to be adopted in the facts of this case because the distinguishing features of Ramanathan's case have already been noted earlier. That was a case where the jurisdiction of the Industrial Court had been questioned and it was the case of the employer that the dues of the workmen had already been paid and settled. In the present case on the contrary there is no dispute about the fact that moneys are due and outstanding to the workmen and their wages have not been paid in accordance with the order of the Industrial Court. The entitlement of the petitioners had already been adjudicated upon by the Industrial Court on 22nd June 2001. That judgment stands affirmed by this Court in earlier proceedings. In the present case, the Industrial Court has correctly come to the conclusion that there is no effective challenge to the computation which has been made on behalf of the workmen. This finding has been confirmed in the earlier part of this judgment. The Industrial Court was in error in rejecting the application for the issuance of a recovery certificate only on the basis that the provisions of Section 50 would not be attracted. For the reasons already indicate

the provisions of Section 50 are in fact attracted in this case.

18. Finally, a faint attempt was made to urge, by placing reliance on Form IV appended to the Regulations framed under the M.R.T.U. & P.U.L.P. Act, 1971 that Section 50 will not apply unless an exact computation has been made by the Industrial Court in its order of which enforcement is sought. The Regulations framed under the Act provide thus:

"140(a) An application for recovery of money u/s 50 of the Act shall be made to the Court which passed the order. Such application shall be in Form No. 24.

(b) Application under second proviso to Section 50 of the Act, shall be accompanied by an affidavit setting out grounds why the application u/s 50 of the Act was not made in time.

141. On all applications for recovery notice shall be issued to the opponent/opponents to show cause against the application. The notice shall be in Form 24-A.

142. On the date fixed for hearing the Court may hold such inquiry as it thinks fit, and if the Court is satisfied that the amount sought to be recovered or part thereof is due to the employee, certificate u/s 50 of the act shall be issued in Form No. 25."

Form IV stipulates the form in which an employee who approaches the Court for the issuance of a recovery certificate must move the Court. The material part of Form IV requires the following statement:

"1. The applicant is entitled to make this application in the capacity of-

(a) Employee entitled to receive money.

or

(b) Assignee of the Employee entitled to receive money.

or

(c) Heir of deceased employee entitled to receive money.

2. This Court has ordered that a sum of Rs.....should be paid by opponent No..... to the employee in Application (ULP) No..... decided by this Court on.....

3. A copy of the order is enclosed.

4. The applicant has not been paid/has been only paid Rs..... out of the amount recoverable by applicant."

The error of the Respondent lies in submitting that the computation which Form 24 requires must be a computation which has already been made in the previous proceedings by the Labour or Industrial Court. Plainly this is incorrect. Form 24 requires that the employee must state and disclose the amount which is claimed.

That amount has to be obviously on the basis of the previous order of the Labour or Industrial Court. Form 24 requires that an employee who seeks a recovery certificate must provide a statement of the amount due on the basis of the order of the Labour or Industrial Court. The arithmetical computation will be subject to verification by the Court before it issues a recovery certificate. Regulation 142 in fact contemplates an enquiry by the Court. The Court is empowered to issue a certificate if it is satisfied that the amount sought to be recovered or part thereof is due to the employee. There is hence to merit in the submission. Moreover, Counsel for the Petitioners has submitted that a similar form is appended to the Central Rules in conjunction with Section 33C(i) of the Industrial Disputes Act, 1947. The interpretation placed by the Supreme Court on Section 33C(1) has been noted earlier. Above all, it is trite law that a form, even a statutory form at that, cannot override or control the mandate of a statutory provision. Here the form is a part of subordinate or delegated legislation which cannot override a statute to which it owes its existence. The Supreme court put it thus in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, :

"Shri Nariman argued that none of the prescribed forms provided for the application and grant of subsequent permission. That may be so for the obvious reason that ordinarily one would expect permission to be sought and given before the act. Surely, the Form cannot control the Act, the Rules or the directions. As one learned Judge of the Madras High Court was fond of saying it is the dog that wags the tail and not the tail that wags the dog. We may add what this Court had occasion to say in Vasudev Ramchandra Shelat Vs. Pranal Jayanand Thakar and Others, :

"The subservience of substance of a transaction to some rigidly prescribed form required to be meticulously observed, savors of archaic and outmoded jurisprudence."

19. In the circumstances, the petition is allowed. The order of the Industrial Court dated 10th June 2003 in so far as it dismissed the application u/s 50 of the Act on the ground that it was not maintainable is quashed and set aside. The claim made by the workmen has been held by the Industrial Court to be otherwise duly substantiated, and the only ground on which the workmen were refused relief was on the question of maintainability. On merits, the computation made by the workmen has not been challenged. The evidence has been appreciated by the Industrial Court and the view of the Court on merits had already been affirmed for reasons indicated earlier. The application filed by the workmen for the issuance of a recovery certificate shall in the circumstances, stand allowed. The Industrial Court shall now proceed to issue a certificate of recovery u/s 50 of the Act. The Writ Petition is disposed of in the aforesaid terms. The Respondents shall pay to the petitioners the costs of the proceedings quantified at Rs. 3,000/-.

20. Learned Counsel appearing on behalf of the Respondents prays for stay of operation of this order. Stay refused.