

(2014) 03 CAL CK 0101
In the Calcutta High Court
Case No : Writ Petition No. 38 of 2013

Smt. Mita Sen

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Constitution of India, 1950 — Article 12 226

Industrial Disputes Act, 1947 — Section 11 15(2) 15(2)(b) 33C(1) 33C(2)

Citation : (2014) 3 CHN 462 : (2014) 141 FLR 555 : (2014) 2 LLJ 242

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Soumya Majumdar and Ms. Soma Kar Ghosh, for the Appellant; Aiman Abdulla, Sandip Kumar Datta for Respondent No. 3 and Mr. Sabyasachi Roychowdhury for the State, for the Respondent

Judgement

Soumen Sen, J.—The order of the presiding Judge, 1st Labour Court in refusing to pass any order in an application filed by the petitioner u/s 33C(2) of the Industrial Disputes Act, 1947 is the subject matter of challenge in this writ petition. The said relief was refused on the ground that the order passed u/s 15(2)(b) of the Industrial Disputes Act, 1947 is not an award which is capable of being executed u/s 33C(2) of the Industrial Disputes Act. It appears from the record that the learned Judge of the 3rd Industrial Tribunal in an application filed by the petitioner u/s 15(2)(b) of the Industrial Disputes Act, 1947 has awarded interim relief in favour of the petitioner by reason of failure on the part of the employer, namely, the respondent No. 3 to pay the amounts in terms of the said order. The petitioner filed an application u/s 33C(2) seeking a direction upon the company to compute the amount in terms of the order passed u/s 15(2)(b) of the Industrial Disputes Act along with other statutory benefits to which the petitioner is entitled to under the said order.

2. The only objection taken by the company seems to be that the order passed is in the nature of interim relief and not an award which is capable of being executed in a proceeding u/s 33C(2) of the Industrial Disputes Act. The

petitioner is not having any existing right nor any right is arising out of an award which can be enforced in a proceeding u/s 33C(2) of the Industrial Disputes Act.

3. Mr. Soumya Majumdar, learned Counsel appearing on behalf of the petitioner, submitted that the said order was passed by the learned Tribunal completely in remiss of the disjunctive clause "or" referred to in 33C(2).

4. It is submitted that the proceeding u/s 33C(2) is more wide than a proceeding u/s 33C(1) and in a proceeding u/s 33C(2), the tribunal has a jurisdiction to determine whether the workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. The expression "any benefit", according to the learned Counsel, has been lost sight of by the Tribunal while deciding the said application. The Tribunal has only confined its enquiry and attention to Section 33C(1) and has disregarded Section 33C(2).

5. The Tribunal on the basis of the evidence and the decision cited before it held that since there is no scope for computation of any amount as there is no dispute regarding the quantum of money to be paid by the applicant and the period for which it is to be paid, there is no scope to invoke the jurisdiction of this Court u/s 33C(2) of the Industrial Disputes Act. The Tribunal has taken into consideration a decision of the Calcutta High Court passed in W.P. No. 145 of 2000 (M/s. Lytton Hotel Vs. State of West Bengal & Ors.) in which it was held that the determination of an interim relief u/s 15(2)(b) is neither enforceable nor does it have any compulsive character and, therefore, such determination of interim relief u/s 15(2)(b) is not recoverable as the land revenue. The Hon"ble Court seems to have further observed that if, however, the employer considers that it has a strong case, it might well-choose not to pay any amount determined u/s 15(2)(b) as the employee would be faced with the problem of recovering the amount, in the event, ultimately the said employer succeeds.

6. In Debabrata Sen Vs. State of West Bengal & Ors. reported in 1998 (2) CHN 556 a learned Single Judge while considering the enforceability of an order passed u/s 15(2)(b) of the Industrial Disputes Act (West Bengal Amendment) held that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India would not be powerless to issue a mandate upon the employer even if the said employer is not an authority or State within the meaning of Article 12 of the Constitution of India to carry out the order of the Tribunal for payment of interim relief. The learned Single Judge in justification of directing payment of money under Article 226 of the Constitution of India held that in the event, the said order cannot be executed the very purpose for which such concept of interim relief has been introduced by the West Bengal Amendment to the Industrial Disputes Act would be defeated. This issue was addressed in Paragraphs 20, 21, 22, 23, 24 and 25 of the said report which are stated below:-

20. The provisions for grant of interim relief to the workman during the pendency of a dispute before the Industrial Tribunal, has been introduced by West Bengal

Amendment of the Act. The very expression "interim relief" will indicate the aforesaid provisions has been introduced by the said amending Act for the purpose of giving interim relief to the workman. Such enactment, therefore, is a beneficial piece of legislation introduced for the welfare of the workman, who are weaker section of the community and for their subsistence during the pendency of adjudication of dispute. The provisions in the said section that the quantum of interim relief in case of termination of service of a workman shall be equivalent to subsistence allowance as may be admissible under the West Bengal Payment and Subsistence Allowance Act, further make such position clear.

21. Under such a situation it is inconceivable that an industrial tribunal although passes an order for grant of such relief after hearing both the parties, such an order will be allowed to be defeated and frustrated by the employer on the ground that a tribunal is powerless to enforce such order.

22. To give real meaning to such beneficial piece of legislation introduced for the welfare of weaker section of the community, namely, the workman, a liberal and purposive interpretation is required to be made of the relevant provisions of the Industrial Disputes Act.

23. The order passed by the Industrial Tribunal directing payment of such interim relief u/s 15(2)(b) of the Industrial Disputes Act is not an award and not even an interim award. It is really in the nature of an interlocutory order in terms of the aforesaid provision of the Act, for giving some relief to the workman during the pendency of the adjudication of the dispute between the parties. When the tribunal after adjudication of the dispute passes an award, no doubt it becomes functus officio and, therefore, may not pass any order for enforcing such award, no provision of the Act having empowered the tribunal in respect thereof. But the position in case of grant of interim relief is different. After passing of an order u/s 15(2)(b) of the Act directing payment of interim relief, the tribunal does not become functus officio as the adjudication of the dispute between the parties is still pending. By such an order, only the prayer for grant of such interim relief under the aforesaid provisions of the Act is disposed of. Such order, therefore, is clearly in the nature of an interlocutory order pending adjudication of the main dispute between the parties. The power of the tribunal, therefore, to enforce such an order pending adjudication of dispute can certainly be read in Section 11 of the Industrial Disputes Act, if a liberal and purposive interpretation of the said section is made.

24. Section 11 empowers the tribunal to regulate its own procedure. In exercise of such power, therefore, the tribunal can certainly evolve a procedure for enforcement of an order directing payment of interim relief to the workman, the same being in the nature of an interlocutory order for which the very object and purpose of such a welfare legislation will be frustrated.

25. Under such circumstances when an employer violates the order of the tribunal directing payment of interim relief by not paying of such amount, even if

such order of the tribunal has not been set aside or stayed by the higher court, it will certainly be open to the Industrial Tribunal to enforce compliance of such order of the tribunal by making payment of interim relief as condition precedent for the employer to participate in the adjudication proceedings before the tribunal and to defend itself.

7. It appears that subsequently another Single Bench in *Bengal Metrograph Co. (P) Ltd. Vs. State of West Bengal and Others*, in considering an order passed by the Tribunal allowing an application of the employee to strike out the defence of the employer for failure to pay interim relief held that even if the legislature intended Section 15(2)(b) to be a welfare legislation till then the legislature did not intend that in default of compliance of an order passed u/s 15(2)(b) the entire right of the company would perish. It was held that the Tribunal has no power and/or jurisdiction to strike out the defence of a company for non-compliance of the order passed u/s 15(2)(b) as an interim measure. However, the learned Single Judge directed the company to pay the workman Rs. 1 lakh as against the interim relief without prejudice to the rights and contentions of the parties. The learned Single Judge also considered *Debabrata Sen (supra)*.

8. There cannot be any doubt that Section 15(2)(b) was introduced with a view to give an interim relief to the workman so as to enable him to participate in the industrial adjudication in more effective manner. The said Section 15(2) was introduced by the West Bengal Act 57 of 1980. The provision came into force on November 30, 1981. Section 15(2)(b) was introduced by the legislature for protecting the interest of indigent workmen when fighting a cause against the management where always the fight is between two unequals. The said section now makes it a statutory obligation to grant such quantum of interim relief as would be admissible. The constitutional validity of the said section has been upheld in *G.P.I.F.E.I.C.S. Ltd. Vs. Seventh Industrial Tribunal* (1985 Lab. IC 1762). In the event, it is contended that the orders passed u/s 15(2)(b) are not enforceable then the very purpose and object of the said Section would be otiose and rendered nugatory. The intention of the legislature would be frustrated. The object can hardly be fulfilled or advanced if such interim relief after adjudication cannot be executed by the tribunal. It is one thing to contend that in the event of failure to pay the aforesaid amount, the defence should be struck off and it is another thing to say that such order would not be enforceable and the amount cannot be realized at all and such order would remain on paper only. In a similar situation, under the Kerala Payment of Subsistence Allowance Act, a learned Single Judge of the Kerala High Court in *Kerala State Coop. Coir Marketing Federation Vs. Labour Court and Others*,) held that the claims available under the Subsistence Allowance Act can be recovered by filing an application u/s 33C(2) of the Industrial Disputes Act.

9. The said Section 15(2)(b) casts a duty upon the tribunal to grant interim relief and provides a guideline to the concerned Tribunal when it says that in the case of discharge, dismissal or retrenchment of a workman, the quantum of an

interim relief would be equivalent to the Subsistence Allowance available under the West Bengal Payment of Subsistence Allowance Act, 1946. Section 15(2)(b) is in the nature of an interim benefit akin to subsistence allowance and intended to enable the workman to sustain and effectively participate in the said litigation. This is a beneficial piece of legislation.

10. It is the trite that there cannot be a wrong without a remedy. Similarly, it would be absurd to suggest that although the statute provides a mechanism to determine interim relief but would be powerless to enforce the said order. In *Debabrata Sen (supra)* it was held that such amount can be realized in an application filed under article 226 of the Constitution of India.

11. *M/s. Lytton Hotel (supra)* was reversed in appeal preferred by the concerned workman. The Hon'ble Division Bench in *Mary Mendes Vs. Lytton Hotel and Others*, while setting aside the order of the learned single Judge stated:-

Suffice it to point out that Section 15(2)(b) of the Industrial Disputes Act has been held to be a benevolent legislation. An interim relief, when granted, is meant to be complied with. How and in what manner the same would be complied with is a question which, having regard to the facts situation of this case, need not be answered. It must, however, pointed out that the learned Trial Judge has proceeded wholly on a wrong premise. Payments made u/s 15(2)(b) of the Act by the employer is neither voluntary nor such amount is paid by the employer for the purposes mentioned by the learned Trial Judge.

It is a well settled principle of law that normally the principles of interpretation of statute, to the effect that when an order is passed by the Court, the same is meant to be implemented, should be followed. The Legislature cannot be held to have the intention while legislating the said provision that such orders made thereunder may not be implemented. The learned Trial Judge, therefore, was no correct in holding that the orders made u/s 15(2)(b) of the Industrial Disputes Act was not enforceable at all. Such construction of the aforementioned provision, in our opinion, would make the entire provision otiose and the intention of the Legislature, wherefor such provision has been enacted, would be totally frustrated. In *Rai Bahadur's* case reported in 1999 (1) CHN 711, although this court has held that there should be a substantive provision for striking off the defence, it did not rule out such a consequence of non-observance of repeated orders passed by the learned Industrial Tribunal or the Labour Court, as the case may be.

Mr. Anindya Mitra, learned senior Counsel appearing on behalf of the respondent, however, submits that an order passed u/s 15(2)(b) of the Industrial Disputes Act can be enforced only by taking recourse to Section 33-C(2) of the Industrial Disputes Act. That may be one of the provisions which may be taken recourse to, for enforcing the order based u/s 15(2)(b) of the Act although the said question need not be finally answered. But having regard to the conduct of the respondent herein, we are of the opinion that the respondent should not be permitted to

examine any witness further or further cross-examine the witnesses appearing on behalf of the appellant unless it pays off the entire arrears.

12. The judgment of the Division Bench was not placed before the learned Tribunal.

13. The Bengal Metrograph Co. (P) Ltd. (supra), in my respectful reading, does not say that the order passed by the learned Tribunal in determining interim relief is not enforceable or executable. The issue before the learned Single Judge was whether the defence can be struck off for non-compliance of the order passed u/s 15(2)(b).

14. In my view, apart from the aforesaid, in view of the word "benefit" appearing in Section 33C(2) a proceeding can be initiated before the Tribunal for recovering such amount. The word "benefit" in view of Section 33C(2), in my opinion, is of wide import and it includes in it the benefit which is extended to an employee u/s 15(2)(b) of the Industrial Disputes Act, 1947. The Dictionary meaning of the word "benefit" includes advantage or profit which naturally includes a monetary advantage or monetary profit. The word benefit comprehends all kinds of benefits whether monetary or not monetary which a workman is entitled to in accordance with law. The word "benefit" would include a benefit expressed or otherwise in terms of money which require computation. It is true that the benefit in the nature of interim relief has been computed but in absence of any other provision in the Act taking into consideration the purpose and object of Section 33C(2) the order passed u/s 15(2)(b) is recoverable u/s 33C(2). The word "benefit", in my view is of wide amplitude so as to bring within its sweep interim relief which has been determined in terms of Section 15(2)(b). This amount has been adjudicated in a dispute arising out of the relation between the employee and employer. This is a benefit which the petitioner is entitled to during the pendency of the dispute before the Tribunal. This interim relief having been already adjudicated and is a benefit extended to the workman, such amount can be realized in a proceeding u/s 33C(2). Any other narrow interpretation of the word "benefit" in the facts of the case would render the said Section 15(2)(b) otiose and a dead letter.

15. The workman cannot be held remediless. In fact, the remedy lies in Section 33C(2) of the Industrial Disputes Act.

16. In State of Uttar Pradesh and Another Vs. Brijpal Singh, the Hon'ble Supreme Court held that a proceeding u/s 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. The right to the money which is sought to be calculated or the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial

workman and his employer. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33C(2) of the Act while the latter does not. In the instant case the Tribunal in terms of Section 15(2)(b) has already determined the benefit which is capable of execution u/s 33C(2) in case of failure to pay.

17. The tribunal, in my view, has failed to take into consideration the wide import of the word "benefit" as appearing u/s 33C(2) of the Industrial Disputes Act and restricted its enquiry and interpretation to Section 33C(1) of the Industrial Disputes Act to deny such relief.

18. The learned Counsel representing for the State has also submitted that the procedure to be adopted for realization of such interim relief is by initiation of a proceeding u/s 33C(2).

19. In view thereof, the impugned order is set aside. The Labour Court shall dispose of the application u/s 33C(2) within four weeks from the date of communication of this order. However, there shall be no order as to costs. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.