

(1959) 03 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No's. 820 and 842 to 847 of 1958

South Arcot Electricity Distribution Co. Ltd.

APPELLANT

Vs

Elumalai and Others

RESPONDENT

Date of Decision : 05-03-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C, 33C(1), 33C(2), 33C(3), 7

Citation : AIR 1959 Mad 401 : (1959) ILR (Mad) 812 : (1959) 1 LLJ 624 : (1959) 72 LW 380 : (1959) 2 MLJ 545

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : K. Rajah Aiyar, M. Ranganatha Sastri and S. Bhaskaran, for the Appellant; Addl. Govt. Pleader, S. Mohan Kumaramangalam, R. Ramasubbu Iyer, R. Gopalan, A.D. Sitharaman, B.R. Dolia and T. Venkatadri, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Ayyar, J.—The questions for determination in all these writ petitions are the same, and, I shall therefore, deal with them

together.

2. With effect from 1-6-1957, the Government of Madras took over the undertaking of the South Arcot Electricity Distribution Company Ltd.

They did so in exercise of the powers conferred on them by Madras Act XXIX of 1954. One consequence of this taking over, was that by virtue

of Section 6 of the Act all the properties of the company and all its rights, liabilities and obligations as on the vesting date, subject to certain

provisos, vested in the Government. Sometime after they took over the undertaking the Government transferred it to the Madras State Electricity

Board.

The taking over of the undertaking of the company by the Government had another consequence which was probably not anticipated. Section 25-

FF of the Industrial Disputes Act, as it stood in 1956, that is to say, before it was amended by Central Act 18 of 1957, provided that no workman

would be entitled to compensation by reason merely of the fact that there had been a change of employers in any case where the ownership or

management of the undertaking in which he was employed was transferred, whether by agreement or by operation of law from one employer to

another, provided certain conditions referred to later on in the section were satisfied.

Central Act 18 of 1957 recast the section and provides in positive terms that where the ownership or management of an undertaking is transferred,

whether by agreement or by operation of law, from one employer to another, every workman who had a continuous service of not less than one

year shall be entitled to notice and compensation as if he had been retrenched, unless certain conditions are satisfied. A large number of the

employees of the undertaking which the Government took over, from the S.A.E.D. Co. Ltd. considered that they were entitled to retrenchment

compensation and certain other benefits referred to in Section 25 of the Industrial Disputes Act, and, to enforce their claims they filed petitions

before the Labour Court, Madras. To these proceedings the South Arcot Electricity Distribution Co. Ltd., the State of Madras and the Madras

State Electricity Board were made parties.

3. Before the Labour Court, the Company, the Government and the Electricity Board, took the preliminary objection that the labour court had no

jurisdiction to enquire into the claims. By an order pronounced on 3-10-1958, the Labour Court overruled the objection and posted the petitions

for further inquiry. The present writ petitions have been filed to quash this order of the labour court.

4. A substantial portion of the arguments before me turned on the scope design and purposes of Section 33-C of the Industrial Disputes Act, and,

it will therefore be convenient if I were to set it out in full.

Section 33-C. 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 V-A, the

workman 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.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court, as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purposes of computing the money value of a benefit, the labour court may, if it so thinks fit appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the labour court and the labour court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

The arguments of Mr. Rajah Aiyar, the learned Advocate for company, so far as they related to this section, may be thus summarised. The benefits

which a workman or employee is entitled to may be placed in two broad categories, monetary benefits and non-monetary benefits. Into the former

category would fall claims like those relating to arrears of pay, differences between scales of pay and the like. Into the latter category would fall

claims relating to, or arising out of say, sickness, injuries suffered during the course of the employment, loss of various facilities and conveniences

and the like. Sub-section (1) of Section 33-C applies to monetary benefits. Sub-section (2) of Section 33-C applies to non-monetary benefits. The

claims made in the present case are wages for the period of the notice to which the petitioners say they are entitled, and compensation computed at

the rate of fifteen days' average pay for every year of completed service. These are monetary benefits and therefore fall within the scope of the first

sub-section and not of the second sub-section of Section 33-C. The labour court has, therefore, no jurisdiction in the matter.

5. If it be replied that Sub-section (1) of Section 33-C does not contemplate any enquiry by Government then such a reply must be held to be

unsound because in *Sree Behariji Mills Ltd. Vs. State of Bihar and Others*, , it was held by the Patna High Court,

The newly-inserted Section 33-C(1) expressly grants power to the appropriate Government to make an enquiry about the legal liability of the employer to pay compensation under any provisions of Chapter V-A"".

Mr. Rajah Aiyar also referred to the decision of the Supreme Court in *S.S. Shetty Vs. Bharat Nidhi, Ltd.*, , where their Lordships had to consider

the scope of Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 the language of which is substantially similar to the language of

Section 33-C (1) and (2). On page 17 the following observations appear:

Any money which is due from an employer under the award can by virtue of the provisions of Section 20(1) of the Act be recovered by the

appropriate Government on an application made to it by the workman. Where, however, any benefit which is not expressed in terms of money is

awarded to the workman under the terms of the award it will be necessary to compute in terms of money the value of that benefit before the

workman can ask the appropriate Government to help him in such recovery. Section 20 Sub-section (2) provides for the computation in terms of

money of the value of such benefit and the amount at which such benefit should be computed is to be determined by the Industrial Tribunal to

which reference would be made by the appropriate Government for the purpose.

In respect of this decision it is enough to say that their Lordships did not decide that only claims relating to benefits which are non-monetary in

character can be investigated u/s 20(2). What they said was that when a computation has to be made, it has to be done u/s 20(2), and these

observations would apply with equal force both to benefits which are monetary in character and to benefits which are non-monetary in character.

6. So far as the observations of the Patna High Court are concerned, with respect I find it difficult to agree. I am unable to find in Section 33-C(1)

words which expressly grant power to the appropriate Government to make any enquiry ""about the legal liability of the employer to pay

compensation under any of the provisions of Chapter V-A"".

7. What Sub-section (1) of Section 33-C provides for is this: Money may be due to a workman from an employer in pursuance of a settlement

reached in the course of conciliation proceedings. Money may be due to him in

pursuance of an award made by a Tribunal. Money may also be due to him for lay off and retrenchment. Now, if any money is due to a workman in respect of any of these claims then the workman concerned is

given leave to make an application to the Government for the recovery of the money due to him.

Then if the appropriate Government is satisfied that the money is due, an obligation is imposed on it to issue a certificate to the Collector who

would thereafter proceed to recover the money as if it were an arrear of land revenue. Before Section 33-C(1) can take effect the money must

be: due; that is to say, it must have become payable. Obviously no money can become due or payable; before the amount of it is ascertained. This

sub-section therefore relates to a stage in the proceedings where the amount due to the employee or workman has been quantified and

determined.

No doubt the appropriate Government has to be satisfied that the money is due to the workman But then, this sub-section does not say that the

satisfaction is to be readied as a result of any enquiry conducted by the Government itself. If on the documents produced before it the Government

is satisfied that the money is due, it can take action. If I may use an analogy drawn from civil proceedings, the position of the Government at this

stage would be that of an executing court. The amount due to the workman must have been determined previously.

The only questions that Government could investigate at this stage would be questions arising from pleas like payment or satisfaction. Sub-section

(2) of Section 33-C however refers to a stage anterior to that provided for in Section 33-C(1). Again, to borrow the analogy from civil

proceedings, the stage referred to here is the stage of enquiry or trial at the end of which alone would it be possible to say whether any sum is due

to a workman and if so how much.

Under Sub-section (2) when any workman claims that any money is due to him the value of which can be computed in terms of money then he can

go to the Labour court and apply that the amount be determined. After the labour court has ascertained the amount, the workman, armed with the

order of the Labour court, may go to the Government and ask the Government to recover the money through the Collector as if it were an arrear

of land revenue. The distinction between the two sub-sections is to say the distinction between determination of the amount and the recovery of the amount is brought out by the concluding words of Sub-section (2) which runs, the amount so determined may be recovered as provided for in Sub-section (1). These words make it fairly plain that Sub-section (2) provides for the determination of the amount and Sub-section (1) for the collection of the amount all that is excluded from the scope of Sub-section (2) are benefits which are not capable of being computed in terms of money.

8. I have already said that Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is in substantially similar terms to Section 33-C(1) and 33-C(2) of the Industrial Disputes Act. The question whether Sub-section (2) of Section 20 of that Act related only to benefits which are not monetary in character, or whether it comprehended monetary benefits also was considered by Rajagopalan J. in *The Management of Rajamani Transport, Ltd. Vs. The Collector of Tiruchirapalli and Others*, . The learned Judge observed :

The further contention was that the statutory provision (i.e. Section 20(2)) of the Industrial Disputes (Appellate Tribunal) Act, necessarily implied only evaluation of a benefit other than a pecuniary benefit to which a worker was entitled under the terms of the award. I am unable to accept such a restricted construction of the language of Section 20(2). The section speaks of "computation" and not merely of commutation of a benefit, commutation might imply that it was a benefit other than a pecuniary benefit that was contemplated. The expression "benefit" in Section 20(2) of the Act is, in my opinion, wide enough to include within its ambit any benefit which has accrued to the worker under the terms of a valid and enforceable award.

9. With this conclusion I am in respectful agreement. I would at this stage refer to the decision of the Supreme Court in *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, . That case arose under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955. Section 17 of that Act is, to the extent now material, similar in terms to Sub-section (1) of Section 33-C, and it provided, Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, the newspaper employee may

..... make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the.

State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate

Dealing with that the court observed :

On the other hand, the case for the petitioner is that the section provides, for a procedure to recover the amount due from an employer, not for

the determination of the question as to what amount is due. The condition precedent for the application of Section 17 is a prior determination by a

competent authority or the court of the amount due to the employee from his employer. It is only if and after the amount due to the employee has

been duly determined that the stage is reached of recovering that amount and it is at this stage that the employee is given the additional advantage

provided by Section 17 without prejudice to any other mode of recovery available to him.

According to this view, the State Government or the authority specified by the State Government has to hold a summary enquiry on a very narrow

and limited point : Is the amount which was found due to the employee still due when the employee makes an application u/s 17, or, has any

amount been paid? It is only a limited enquiry of this type which is contemplated by Section 17.

Within the scope of the enquiry permitted by this section are not included the examination and decision of the merits of the claim made by the

employee. When the section refers to the application made by the employee for the recovery of the money due to him, it really contemplates the

stage of execution which follows the passing of the decree or the making of an award or order by an appropriate court or authority. In our opinion,

the construction suggested by the petitioner should be accepted because we feel that this construction is more reasonable and more consistent with

the scheme of the Act.

10. Mr. Rajah Aiyar finally referred to Sub-section (3) of Section 33-C which empowers the labour court, if it thinks fit, to appoint a

Commissioner for the purpose of computing the money value of a benefit claimed by an employee. This provision, said Mr. Rajah Aiyar, suggests

that the scope of Section 33-C(2) is limited to non-monetary benefits. I am

unable to agree. The existence of this provision only shows that u/s 33-C(2), the labour court may be called upon to investigate non-monetary benefits also. It does not suggest that only claims to monetary benefits can be investigated under this sub-section. As I said before, the line of division between Section 33-C(1) and Section 33-C(2) would be analogous to that between execution proceedings and trial proceedings. u/s 33-C(2) the amount due has to be determined and u/s 33-C(1) the amount so determined may be recovered.

11. Mr. Rajah Aiyar also referred to the decision of Rajagopala Aiyangar, J. in C.B.R. Ratnam and Co. Vs. D. Ekambaram and Another, . I do

not think that this case helps the contention of Mr. Rajah Aiyar at all. There, the learned Judge was floating with Section 25-I of the Act, which

enabled money due from an employer to be recovered as an arrear of land revenue by the appropriate Government on an application made to it by

the person entitled to the money. That section has been repealed. The learned Judge then commented on the absence in the Act

of any machinery for determining the questions which would obviously arise in cases of dispute : (i) was the workman who makes the claim

"retrenched" so as to give rise to the statutory liability, (ii) the determination of the facts which underlie the computation of the amount of

compensation u/s 25-F(b). There might be dispute between the employer and the workman as regards both these matters.

This omission the legislature apparently sought to make good by introducing Section 33-C in 1956.

12. Mr. Rajah Aiyar next put forward an argument in the alternative. He pointed out that Section 33-C(2) begins ""Where any workman is entitled

to receive from the employer any benefit"" etc, and he said that the use of the word ""entitled"" indicates that the sub-section relates to the stage when

the title of the workman to receive the money has been already established. Where there is a controversy about the claim of the workman some

competent authority must have decided that his claim is good. It is only thereafter that the Labour court can proceed to determine how much the

amount due is. This construction which Mr. Rajah Aiyar invited me to put on the section would produce some very surprising results.

If a workman for instance were to" claim ie-trenchment compensation and his

claims were to be disputed then only two courses would be open to him to recover his money. He must persuade the other employees to take up his cause and raise an industrial dispute, and, after such a dispute is raised, the Government must be moved to refer the dispute to the appropriate labour court or Tribunal. Alternatively he must go to a regular civil court and file a suit.

If an industrial dispute is raised and the matter is referred to the appropriate Labour Court or Tribunal, then, that court or tribunal could determine how much money is payable to the workman, and, there would be no need to refer the issue back to the labour court u/s 33-C(2). Again, if the workman has got to go to a civil court that court can also determine the amount of compensation due to the workman--assuming of course that he is entitled to compensation.

The argument of Mr. Rajah Aiyar would require that after having obtained a decision from the civil court to the effect that he is entitled to compensation the workman must go to the labour Court and ask that court to determine how much the amount is. Now, one purpose of the Industrial Disputes Act is to set up a special machinery which would expeditiously dispose of disputes between employers and employees and also the claims of workmen. It will be noticed that the numerous amendments made to the Act subsequent to 1947 have progressively increased the rights and facilities conferred on workmen. The arguments of Mr. Rajah Aiyar would, it seems to me, run counter to the whole scheme of the Act and the various amendments incorporated in it from time to time.

13. The next important contention of Mr. Rajah Aiyar was along these lines. Section 7 of the Act empowers the appropriate Government to constitute one or more labour courts. Such labour courts have jurisdiction to adjudicate industrial disputes relating to matters specified in the Second Schedule to the Act. Labour Courts can also perform such other functions as may be assigned to them under the Act. Then there is Section 7-A which empowers the appropriate Government to constitute one or more Industrial Tribunals.

These Tribunals would have jurisdiction to decide industrial disputes whether they relate to matters specified in the Second Schedule or the Third Schedule. The point is that if a matter falls in the Third Schedule it is only the

Industrial Tribunal that would have jurisdiction and not the Labour

court. If we turn to the Third Schedule we find there ""retrenchment of workmen and closure of establishment"" enumerated as the tenth item. So

questions of retrenchment are within the exclusive jurisdiction of Industrial Tribunals. The Labour court, which is the court referred to in Section

33-C(2), has, therefore, no jurisdiction in the matter.

14. It appears to me that a fallacy is involved in this reasoning. The second and third schedules to the Act would become relevant and the

jurisdiction connected with the matters enumerated in those schedules would spring into existence only when there is an industrial dispute. Where

there is no industrial dispute at all, there is no scope for referring either to the second schedule or to the third schedule. That being so, it cannot be

said that the jurisdiction of the Labour court is ousted by reason of the fact that retrenchment of workmen is referred to as the tenth item in the third

schedule. There is no industrial dispute in the present case. Every individual workman has made his own application, and, there being no industrial

dispute, the third schedule does not come into consideration at all.

15. u/s 7 Labour courts are empowered to adjudicate on matters referred to in the second schedule should an industrial dispute arise in relation to

any of those matters; in addition they are given power to perform ""such other functions as may be assigned to them under this Act."" u/s 33-C(2)

the Labour court is expressly empowered to deal with claims of the kind that have been preferred before it. This objection also fails.

16. The labour Court therefore has jurisdiction to entertain the petitions filed by the workmen.

17. One thing, however, I must make clear. As I understand their case to be, the position of the Government and of the Electricity Board at this

stage is that they are not bound to pay to the workmen any sum in pursuance of their present claims and that even if it be found that the South

Arcot Electricity Distribution Co. is bound to do so, they would not be liable to make good the amount of such payments to the company. On the

other hand, the case of the company is not merely that they are not bound to pay these amounts to the workmen, but that in case it is eventually

held that they are bound to pay them by virtue of Section 6 of Madras Act XXIX of 1954, that liability would fasten on the Government. The

disputes between the company and the Government inter se would not be within the jurisdiction of the Labour court. That controversy will have to be disposed of outside the Industrial Disputes Act.

18. In the result, these petitions are dismissed but without costs.