
(2021) 11 DEL CK 0202

In the Delhi High Court

Case No : Civil Writ Petition No. 7727 Of 2019, Civil Miscellaneous Application No. 41462 Of 2021, 42709 Of 2021

South Delhi Municipal Corporation

APPELLANT

Vs

Satish & Ors

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (2021) 11 DEL CK 0202

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Arun Birbal, Sanjay Singh, Jagdish Prasad, Jawahar Raja, L. Gangmei, Archit, Varsha Sharma

Judgement

Prathiba M. Singh, J

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. Vide order dated 23rd November 2021, this Court had observed:

"6. Today, it is being pointed out by Mr. Birbal, Id. counsel, that in the counter affidavit filed by the Workmen, it was disclosed that the entire amount in terms of the impugned order has already been paid to the Workmen on 18th July, 2019, in respect of pecuniary benefits upto 30th April, 2019. This fact was not brought to the notice of this Court for the last two years by the Workmen. In fact, a peremptory order was also passed on the last occasion, even then, the Court was not informed that the entire amounts have been received.

7. In the present case, the impugned award is of 1st February, 2019 and the same was published on 14th February, 2019. On 4th July, 2019, an implementation application was moved by the Workmen, under Section 33C of the ID Act. On 15th July, 2019, the present writ petition was filed. The said petition was first listed on 19th July, 2019, however, curiously the payment in

view of the implementation application, was released on 18th July, 2019, after the filing of this writ petition.

8. A similar trend is also noticed in a few other cases concerning the Corporation where even after payments are received by the Workmen, the same is not disclosed and further orders have been passed by the Court, in view of the said non-disclosure either directing deposits or further payments of admitted amounts to the Workman. One such writ petition was listed on 22nd November, 2021 before this Court, being W.P.(C) 11500/2019 titled North Delhi Municipal Corporation v. Om Prakash and Anr.

9. In view of these facts, it is clear that streamlining is required on behalf of the Corporation as to the manner in which awards are challenged by way of writ petitions, and the manner in which recoveries are effected. The Corporation and the workmen also have a duty to inform the Court of the amounts received by them, if any and not conceal the same from the Court. Mr. Birbal submits that the stand of the workmen is that awards cannot be challenged by the Corporation until they are published and there is a very small window of 30 days within which the writ petition has to be filed and thereafter implementation can be sought by the workman. There is a need to remedy this situation. Accordingly, Id. counsels for all parties to make submissions in this respect, on 30th November, 2021.

10. In the present case, in view of the fact that the amount has already been paid to the Workmen, the direction of this Court for deposit of 60% backwages is recalled. The Workmen shall also file an affidavit undertaking that insofar as the amounts which have been received by them, they shall abide by the final decision in this writ petition and if any directions are passed for refund or repayment of the same to the Corporation, the same shall be refunded by the Workmen.

11. A specific affidavit shall also be filed by the instructing official - Mr. Ravi Garg - Administrative Official, South Delhi Municipal Corporation, as to why the factum of payment was not brought to the notice of the Id. Counsels and the Court, in a timely manner. Both these affidavits shall be filed by 30th November, 2021.

12. The Workmen and the concerned official of the Corporation shall remain present in Court physically, on the next date of hearing.

3. Pursuant to the said order, the South Delhi Municipal Corporation (hereinafter as 'SDMC') has now filed an affidavit explaining the manner in which the monies were released from the SDMC's office on 18th July, 2019. The Workmen are also present in Court, and have filed an application seeking exemption from filing the undertaking, or for further time to file the said undertaking.

4. One of the Workmen- Mr. Gopal, who is present in Court upon being queried by the Court as to how he got the payment of the amount which was awarded by the impugned award dated 1st February, 2019, has stated that he received the

amount from some office in Connaught Place near a market. He further states that he was told at the Jor Bagh office of the Counsels to go to the Connaught Place office of the Corporation, to collect the amounts by way of cheque/draft. He also states that he thereafter, informed that the said amount has been deposited in his account to his Counsels. He states that he has worked in the Corporation for two and a half to three years and received a sum of Rs.6,46,000/-. He also states that he is not well aware of the various areas in Delhi as he was posted in the Dehat area of SDMC. The other employees, who are present in Court, have also confirmed the same position and have stated that they all went together to collect the cheque/ payments.

5. A perusal of the additional affidavit filed by the SDMC shows that as per the SDMC, the concerned SDM handed over the cheques through the Workmen on 18th July, 2019 despite being told about the filing of the writ petition, which was pending listing. The writ petition, thereafter, came to be listed on 19th July, 2019 on which date the impugned award was stayed. Thus, it seems necessary to call for the original records of the concerned SDM, Karol Bagh, who is the recovery officer in this case, so as to ascertain the sequence of events, inasmuch as, the subsequent proceedings in this Court show that directions were issued for deposit of 60% backwages but the Court was not informed by either party of the fact that the entire amount already stands paid to the Workmen. None of the counsels also informed the Court that amounts had been received by the Workmen by the first listing of the petition.

6. Accordingly, the recovery officer i.e., the SDM, Karol Bagh, is directed to produce the original records relating to this case F No: SDM/KB/Recovery/6490/SDMC/2019/3664, along with an affidavit stating the procedure which was followed leading to the disbursal of the payments to the Workmen on 18th July, 2019. Even the concerned Regional Labour Commissioner is directed to produce all original records relating to this Case. Let the same be filed within four weeks. The officer from the SDMC who is present in Court today- Mr. Jagdish Prasad, Administrative Officer, shall ensure service of today's order upon the SDM, Karol Bagh, as well as the concerned Regional Labour Commissioner within two days.

7. In the meantime, issue notice in CM APPL. 41462/2021. Let reply to this application be filed within two weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

8. There is another grievance that has been raised by Mr. Birbal that copies of the Awards are not being made available to them, until and unless the award is published by the appropriate Government. The same are not even uploaded by the CGIT.

9. Needless to add, in this digital age, all orders of the Labour Courts and of the CGIT including the Awards, ought to be uploaded on the respective website of the Labour Court /CGIT within 48 hours of the same being passed, so that if parties wish to avail of their remedies, they are able to do so, in accordance with

law, irrespective of whether the certified copies of the orders/Awards are available or the Awards are published or not. This order shall be implemented by all Labour Courts and CGIT with immediate effect.

10. Let a copy of this order be communicated to the worthy Registrar General, Delhi High Court who shall communicate the same to the concerned District Judges as also the Presiding Officers at the Labour Court and the CGIT to ensure compliance of the above direction.

11. List on 19th January, 2022 before Court. This shall be treated as a part heard matter.