

(2010) 09 CAL CK 0031
In the Calcutta High Court
Case No : Criminal R.R. No. 2048 of 2010

Surendra Mishra and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Industrial Disputes (West Bengal Amendment) Act, 1980 — Section 18
Industrial Disputes (West Bengal Amendment) Act, 2007 — Section 33C
Industrial Disputes Act, 1947 — Section 33C, 33D

Citation : (2011) 130 FLR 525

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Arindam Sen, for the Appellant; Sandipan Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—Against the present Petitioners a recovery proceeding under Sub-section (1) of Section 33C of the Industrial Dispute Act, 1947 as amended by Section 18 of the Industrial Disputes Act (West Bengal Amendment) Act, 1980 has been instituted in the year 2001 for recovery of a sum of Rs. 4,48,200/- as due and payable to the workman by the opposite party No. 2 herein, in terms of an award under the provisions of the said Act.

The said proceeding is now pending before the Learned Metropolitan Magistrate, 16th Court, Calcutta being Case No. M-52 of 2001.

2. Now, moving the instant criminal revisional application the Petitioner has approached this Court for quashing of the said proceedings, on the ground after coming into force of the Industrial Disputes (West Bengal Amendment) Act, 2007, the Court concerned before which the aforesaid proceeding is pending, has lost his jurisdiction to proceed with the same.

Heard the Learned Counsels appearing on behalf of the parties. Perused the

materials on record and the case laws relied upon by them.

3. According to the provisions of Section 33C of the Industrial Disputes Act, 1947, until it was amended by virtue of Section 18 of the Industrial Disputes (West Bengal Amendment) Act, 1980, if the appropriate Government was satisfied that a money is due to a workman from an employer under an award, it should 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. Thus, till that amendment came into force for recovery of the arrear dues of a workman from the employer on the basis of a certificate issued by the appropriate Government, a recovery proceeding has to be instituted before the Collector and he has to proceed to recover the same in the same manner as prescribes for recovery of an arrear of land revenue. However, after the said provisions being amended by Section 18 of the Industrial Disputes (West Bengal Second Amendment) Act, 1980, "the Collector" was substituted by the word "the Learned Chief Judicial Magistrate or the Chief Metropolitan Magistrate" as the case may be and authorized to recover the such due in the manner as prescribes for recovery of fine. Subsequently, the State of West Bengal brought another amendment in the year 2007, being the Industrial Disputes (West Bengal Amendment) Act, 2007, and a new Section 33D has been inserted after Section 33C.

4. The Learned Counsel of the Petitioner vehemently urged before this Court that after Industrial Disputes (West Bengal Amendment) Act, 2007 has come into force and Section 33D has been brought in the statute books and such amendment being, an amendment of a procedural law to be operated retrospectively, consequently the Learned Chief Metropolitan Magistrate or the Chief Judicial Magistrate as the case may be has completely lost his jurisdiction to proceed further for recovery of any arrear dues of an employee from his employer pursuant to an award and on the basis of the certificate issued by the appropriate Government. According to him the said amended provisions would also be applicable to all pending cases. Thus, submitted the impugned proceeding pending before the Learned Metropolitan Magistrate, Calcutta is wholly without jurisdiction and is liable to be quashed. On the other hand, the Learned Counsel of the State vehemently opposed the prayer for quashing and submitted of the amendment of procedural law not always operate retrospectively. He further submitted by Industrial Disputes (West Bengal Amendment) Act, 2007 nothing has been repealed but a new provision, viz., Section 33D has been inserted in the Parent Act.

5. Now, before adverting to the rival submissions of the parties and coming to the conclusion as to the correct position of law it is now necessary to see by inserting the provisions of Section 33D in the Parent Act what the legislature really intended. The said provision is quoted below;

33D. Recovery of money from the employer in respect of which the appropriate Government u/s 2 is the State Government.

(1) Save as otherwise provided in Section 33C,-

(a) 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 or Chapter V-B, the workman himself or other person authorised by him in writing, on his behalf the case of death of the workman, his assignee or he may, without prejudice to any other mode of recovery, made any application to the Authorised Officer for the recovery money due to him, and if the Authorised Officer is satisfied that any money is so due, he shall issue a certificate for that amount to the Recovery Officer who shall proceed to recover the same in the manner as laid down in this section:

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 expiry of the said period of one year if the Authorised Officer is satisfied that the applicant has sufficient cause for not making the application within the said period;

(b) 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 and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may be decided by the Authorised Officer within a period not exceeding three months after giving an opportunity of hearing to the parties concerned:

Provided that where the Authorised Officer considers it necessary or expedient so to do, he may, for reasons to be recorded in writing extend such period by such further period as he may deem fit:

Provided further that if the Authorised Officer decides that any amount is due to a workman from an employer, he shall issue a certificate for that amount to the Recovery Officer, who shall proceed to recover the same in the manner as laid down in this section.

(2) The Recovery Officer, on receipt of a certificate issued by the Authorised Officer for the amount due to a workman from an employer, shall proceed to recover the amount specified therein from establishment or, as the case may be, the employer by one or more of the modes mentioned below:

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the proportion of the establishment and where such

attachment and sale is insufficient for recovering the whole of the amount of arrear specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

6. Admittedly, the impugned proceeding now pending before the Learned Chief Metropolitan Magistrate, Calcutta has been instituted in the year 2001 under provisions of Section 33C of the Industrial Disputes (West Bengal Amendment) Act, 2007 and has already reached at its verge end. The provision of Section 33C of the Industrial Dispute Act, 1947 was amended by West Bengal Act 57 of 1980 by substituting the words in Sub-section (1) "to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue" by the words "to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate having jurisdiction and the and the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be shall proceed to realize the money as if it were a fine imposed by such Magistrate".

Therefore, by the said amendment a workman was made enable to approach the appropriate Government for recovery of any arrear dues from his employer under a settlement or an award or under any provision of the said Act and the appropriate Government on being satisfied shall issue a certificate for the amount to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate, as the case may be, and such Magistrate shall proceed to realize the money as if it were a fine imposed by such Magistrate.

Whereas, it needs no debate by Industrial Disputes (West Bengal Amendment) Act, 2007, the Section 33D has been inserted in the Parent Act and the provisions of Section 33C has neither been repealed nor been removed from the statute books. It would be abundantly clear from a plain reading of Section 33D that such provision has been inserted in the parent" Act by the legislature in their wisdom by introducing an additional avenue to a workman to recover his legitimate dues from his employer. The very qualifying word of Section 33D of the Industrial Disputes Act, "save as otherwise provided in Section 33C" also made it abundantly clear a further option has been given to the workman as to the mode of recovery of the arrear dues from his employer in addition to the existing one. The net result of this new amendment, now a workman can make an application, without prejudice to any other mode of recovery prescribed in the parent Act to the authorized officer as defined in Sub-section (aaa) of Section 2 of the parent Act and the authorized officer if satisfied shall issue a certificate for that amount to the recovery officer, as defined in Sub-section (ooo) of Section 2. In the said amendment it has also been provided that the said question may be decided by the authorized officer within a period not exceeding three months after giving an opportunity of hearing to the parties concerned and the recovery officer on receipt of such certificate issued by the authorized officer for the amount due to a workman from an employer and shall proceed to recover the amount specified therein from the establishment or, as the case may be by one

or more of the modes as follows:

- (a) attachment and sale of the movable or immovable property of the establishment or, as the case maybe, the employer;
- (b) arrest of the employer and his detention in prison;
- (c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the proportion of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrear specified in the certificate, the Recovery Officer may takes such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

7. Hence, by no stretch of imagination it can now be said because of insertion of Section 33D of the Industrial Disputes Act, 1947, a proceeding for recovery which has been instituted in the year 2001 u/s 33C of the said Act and which is almost at its verge end has become redundant. It cannot also be said that a particular procedural law as regards to the recovery of arrear dues of a workman from his employer provided u/s 33C of the Act has now been repealed or changed or altered by virtue of insertion of Section 33D, which provides an additional mode for recovery of arrear dues from the employer by the employee, the impugned proceeding which is now pending before the Learned Metropolitan Magistrate, 16th Court, Calcutta, has become nugatory.

8. This criminal revision has no merit and stands dismissed. Interim order, if any, stands vacated.

9. The Learned Metropolitan Magistrate, 16th Court, Calcutta, before whom the aforesaid proceeding is pending is reminded that the said proceeding for recovery of the legitimate dues of a workman from his employer, is pending for last 10 years, accordingly, the Learned Magistrate is directed to take immediate steps for giving effect to the certificate issued by the appropriate Government. The Learned Magistrate is directed to take all coercive measures in this regard available under the law and he must not show any single latitude towards the person liable.

This order be communicated to the Learned Chief Metropolitan Magistrate, Calcutta at once and who in turn shall bring this order to the notice of the concerned Court, where the aforesaid proceeding is pending so as to ensure that the said proceeding must be concluded within two months from the date of communication of this order. The Court below is directed to submit a compliance report before this Court.

However, the order of warrant of arrest shall remain stayed for a period of 14 days and in the meantime the Petitioners are directed to surrender in the Court

below. If the Petitioners surrender during the period, the order of warrant of arrest be recalled, failing which the Learned Court below shall have the liberty to proceed against the Petitioners in accordance with law and shall be at liberty to take all coercive measures to compel their appearance in Court.

The Office is directed to communicate this order to the Learned Court below at once.

Criminal section is directed to deliver urgent Photostat certified copy of this judgment to the parties, if applied for, as early as possible.