
(2011) 01 MP CK 0057

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 664 and 699 of 1996

United Soya Products Ltd.

APPELLANT

Vs

Dy. Labour Commissioner and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 250, 33C, 33C(1)

Citation : (2011) 129 FLR 488 : (2011) 4 LLJ 184 : (2011) LLR 629

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—The order passed in this petition shall also govern the disposal of connected W.P. No. 699/1996 (United Soya Products Ltd. v. The Deputy Labour Commissioner and Ors., since the point involved in this petition is common in both the petitions.

2. By this petition preferred under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for following relief:

(a) That the Hon''ble Court be further pleased to issue appropriate writ quashing the auction proceedings held on 23.2.1996 and be further pleased to issue the writ of mandamus directing the Respondents to return the property to Petitioner seized pursuance to the R.R.C. Issued by Respondent No. 1.

(i) That the Hon''ble Court be pleased to call for the record of the matter pending before the Respondent No. 1 and after examining the same be further pleased to quash the impugned order dated 28.12.1995 (Annexure P/6) passed by the Respondent No. 1.

(ii) That any other relief which this Hon''ble Court deems just and necessary under the facts and circumstances of the case be also granted together with cost of the petition.

3. The facts necessary for the disposal of this writ petition lie in a narrow compass. Suffice it to say that on account of closure of the M/s. United Soya Product Limited/Petitioner/company, the money which was due upon the workmen of Respondent No. 3 was not paid. An application u/s 33-C(1) of the Industrial Disputes Act (in short, "the Act") was submitted by the Union on behalf of their workmen before the appropriate government who send notice to the then employer and verification was also made.

4. The appropriate government by impugned order Annexure P-6 dated 28.12.1995 u/s 33-C(1) of the Act directed the then employer/Petitioner/company to make the payment to the tune of Rs. 2,20,748,72 and further directed that this amount will be realized from it as arrears of land revenue and sent the matter to Tahsildar to make the recovery.

5. In pursuance to the recovery certificate, the auction of the unit took place and auction purchaser deposited a sum of Rs. 6.14 lacs with the Revenue Department of State Government.

6. Shri Pratiush Tripathi, learned Counsel for the Petitioner submits that the impugned order Annexure P-6 is without jurisdiction for the simple reason that before invoking any order u/s 33-C(1) of the Act, the amount which is to be paid is to be determined and since there is no order in this regard by any authority, therefore, the order of the appropriate government is ex facie, illegal and without jurisdiction. In support of this contention, learned Counsel places reliance on the decision of this Court rendered in W.P. No. 3787/2000 (B.S.I. Ltd. v. Jagmanek Solvent Plant Karam Sangh and Ors.) decided on 21.9.2010.

7. Per contra, Shri Brabmmadatt Singh, learned Counsel appearing for the Respondent No. 3 supported the impugned order and submitted that Section 33-C(1) is comprehensive enough and it would also include the Chapter V-A and Chapter V-B of the Act and since the case of the Respondent No. 3 comes within the ambit and sweep of Section 25-O of the Act, the order impugned has rightly been passed. According to the learned Counsel, admittedly the wages for the month of September, 1995 to 52 labourers and from April, 1995 to September, 1995 to 15 labourers were not paid which on verification was found to be Rs. 2,20,748.72.

8. Learned Counsel in support of his contention placed reliance on the decision rendered by the Apex Court in the case of The Sawtram Ramprasad Mills Co. Ltd., Akola v. Baliram Ukandaji and Anr. 1965 (11) FLR 384 (SC) Hence, it has been contended by learned Counsel that the learned appropriate government has rightly passed the impugned order and therefore, this petition is liable to be dismissed.

9. Having heard learned Counsel for the parties, I am of the opinion that this petition deserves to be dismissed.

10. I do not find any merit in the contention of learned Counsel for the Petitioner

that there is no earlier determination of the specified amount, therefore, the impugned order is bad in law. On bare perusal of Section 33C(1) of the Act, this Court finds that it is comprehensive enough to include the provisions of under Chapter V-A and Chapter V-B. It is not disputed that the unit has been closed and on account of closure, the payment of wages for the aforesaid period was not made to the workmen. Hence, according to me the provision of Section 33-C(1) of the Act is fully applicable in the present case. In this regard, it would be fruitful to refer Section 33-C(1) of the Act which reads as under:

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 or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the 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:

11. On bare perusal of the aforesaid provisions, I have no scintilla of doubt that since it includes the provisions of Chapter V-B in which Section 25-B is included, therefore, the provisions of Section 33-C(1) would be applicable to the parties. Shri Brahmamadatt Singh, learned Counsel for the Respondent No. 3 has rightly placed reliance on the dictum of Supreme Court in the case of the Sawtram Ramprasad Mills Co, Ltd. (supra) wherein it has been categorically held that it is not essential that the claim which can be brought before the Government or to 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, it would be profitable to quote paragraph 5 of the decision which is as under.

(5) The next contention is that the claim for lay off is not a claim for money due because calculations have to be made before the money due can be found. 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, (C. As. 1108 and 1109 of 1963, D/26-11-1964). 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 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 33-C permits to be made. If there is any question whether there was lay off or not the Labour Court will decide it. This argument, therefore, has no force.

12. Hence, I have no scintilla of doubt in holding that learned appropriate Government did not err in passing the order Annexure P-6 dated 28.12.1995. The decision in the case of B.S.I. (supra) which has been placed reliance upon by learned Counsel for the Petitioner is distinguishable on the facts because the provisions of Section 25-0 and Chapter V-B of the Act were not in dispute in that case.

13. Resultantly, this petition fails and is hereby dismissed with costs. Counsel fee Rs. 2000/- if pre certified.