

(1991) 03 AHC CK 0045

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 660 (c) of 1991

U.P. Rajkiya Nirman Nigam Employees" Association	APPELLANT
Vs	
D.C. Nautiyal, Managing Director, U.P.R.N. and Others	RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 12
Industrial Disputes Act, 1947 — Section 33C

Citation : (1993) 3 LLJ 52

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Advocate : S.K. Banerjee, for the Appellant;

Judgement

S.C. Mathur, J.—The applicant alleges disobedience by Sri D.C. Nautiyal, Managing Director, Uttar Pradesh Rajkiya Nirman Nigam Ltd., Lucknow.

According to the submissions of the learned counsel for the applicant, the applicant had raised labour dispute which was referred to the Labour Court and the Labour Court upheld the claim of the workmen and directed that the workmen shall be treated as confirmed. The award of the Labour Court was published on 5th April, 1986. The employer, namely, U.P. Rajkiya Nirman Nigam Ltd. challenged the award through Writ Petition No. 4231 of 1986 which was dismissed by Judgment and Order dated 10th April, 1990. The submission of learned counsel is that the award of the Labour Court has merged in the judgment of this Court and, therefore, the opposite Party has committed contempt of this Court by not implementing the award. The principle of merger applies to appeals. It does not apply to proceedings under Article 226 of the Constitution. It cannot, therefore, be said that the award of the Labour Court has merged in the Judgment of this Court.

The award of the Labour Court is executable u/s 33C of the Industrial Disputes Act, 1947. There is no occasion, therefore, for the applicant to make the present

application for contempt. Learned Counsel for the applicant has relied upon decision of Division Bench of Gujarat High Court in Bipin Chandra B. Singhwala v. Navin Fluorine Industries and Anr. 1984 L.I.C. 1947 for submitting that the applicant does not have any efficacious alternative remedy for executing the award as the applicant will have to approach the State Government. It has been held that the remedy provided u/s 36A was not efficacious for implementation of the award as that section does not confer any right on the employee to insist on any question being referred to the Labour Court. Section 36A reads as follows:-

"36-A (1)- if, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Court, Tribunal or National Tribunal as it may think fit.

"(2).....".

This provision is attracted when there is any doubt as to the interpretation of an award or settlement or there is any difficulty in respect thereof. In such a situation, right of reference, of course, vests in the Government and not in the employee. It is for this reason that instead of insisting upon recourse to Section 36A of the Industrial Disputes Act, the Gujarat High Court was of the opinion that the contempt application could be entertained. No such situation arises in the present case as it is not the case of the applicant that there is any doubt regarding interpretation of the award or that there is any difficulty in its implementation. The present case is squarely covered by Section 33C of the Industrial Disputes Act which reads as follows:-

"33-C(1) - Where any money is due to a workman from an employer under settlement or an award..... the workman himself or any other person authorised by him in writing in this behalf..... 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 arrears of land revenue."

Under this provision, the only satisfaction the State Government is required to obtain is that the money is due. Once the State Government is satisfied that money is due, it has to issue certificate to the Collector for recovery thereof. It cannot, therefore, be said that the remedy of execution provided u/s 33C is not efficacious.

Under the first proviso, application u/s 33C can be made only within one year. This period has indeed expired as the award in the present case was made on 5th April, 1986. However, in the second proviso, the State Government has power to entertain application even after expiry of the period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the said period.

In my opinion, where relief granted by an order can be obtained by execution thereof, there is no occasion to entertain application for contempt.

In view of the above, the application is rejected.

After the above judgment had been dictated in open Court on 26th February, 1991, learned counsel for the applicant prayed that the signing of the judgment may be deferred as, they proposed to file supplementary affidavit. Accordingly, the case was directed to be put up on the next day. On 27th February, 1991 supplementary affidavit was filed in which it is stated that the Deputy Labour Commissioner had initiated coercive steps to obtain compliance of the award and notice had been issued on 29th April, 1986 by the Deputy Labour Commissioner, Lucknow directing the employer to appear before him and to clarify compliance of the award. The employer is alleged to have failed to justify the delay in implementation of the award on account of which the Deputy Labour Commissioner issued notice on 7th June, 1986 requiring the employer to show-cause against the proposed penal proceedings u/s 14-A of the U. P. Industrial Disputes Act. It is then stated that on account of the pendency of the writ petition, no further steps were taken by the Deputy Labour Commissioner. It is admitted by the learned counsel for the applicant that no interim order had been passed in the writ petition filed by the employer staying operation and implementation of the award. Accordingly, it was open to the applicant to pursue the matter before the Deputy Labour Commissioner. Supplementary affidavit, therefore, instead of improving matters for the applicant, worsens them. It appears from applicant's own averments that failure to comply with the award is punishable u/s 14-A of the U.P. Industrial Disputes Act. In view of the procedure prescribed by the U.P. Industrial Disputes Act itself for obtaining compliance of the award, there is, in my opinion no occasion to issue notice to the opposite party under the Contempt of Courts Act.

In view of the above, the order of rejection remains and the application is rejected.