

(1999) 03 AHC CK 0119
In the Allahabad High Court
Case No : C.M.W.P. No. 9950 of 1999

U.P. State Sugar Corporation Ltd., Unit Chhitauni, Deoria	APPELLANT
Vs	
Presiding Officer, Labour Court, Gorakhpur and others	RESPONDENT

Date of Decision : 27-03-1999

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 33C, 33C(2), 4K
Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 — Section 12, 16, 3

Citation : (1999) 2 AWC 1777

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Rajesh D. Khare, for the Appellant; S.C. and S.S. Rathore, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—By means of this writ petition under Article 226 of the Constitution of India, the order dated 17.12.1998 passed by the Presiding Officer. Labour Court. U.P. Gorakhpur in Misc. Case No. 75 of 1997 u/s 33C (2) of the U.P. Industrial Disputes Act (for short the Act) as well as further recovery proceedings in pursuance thereof have been challenged primarily on the ground that the award dated 28.3.1984 passed in favour of respondent No. 5 Virendra Pratap Singh is not enforceable against the petitioner as it was not a party to the Adjudication Case No. 11 of 1982.

2. On behalf of workman. respondent No. 5, Virendra Pratap Singh a caveat has been filed by Sri S.S. Rathore, who has made his submissions at the initial state of the filing of this writ petition. Sri Rathore urged that he does not want to file any counter-affidavit on behalf of respondent No. 5 and that this writ petition be decided on the basis of the material brought on record by the petitioner.

3. Heard Sri Rajesh D. Khare learned counsel for the petitioner and Sri S.S.

Rathore, learned counsel for respondent No. 5 and the learned standing counsel.

4. The wood cut profile of the case is that Virendra Pratap Singh was admittedly employed as a helper by respondent No. 6 M/s. Laxmi Devi Sugar Mills (P.) Ltd. Chhitauni, district Deoria. His services were terminated on 24.10.1980. He raised an industrial dispute. A reference of the dispute was made u/s 4K of the Act. which gave rise to an Industrial Dispute No. 11 of 1982. An award was made in favour of Virendra Pratap Singh workman on 28.3.1984 which was published on 19.5.1984. It was found that his services were illegally terminated and that he was entitled to reinstatement with full back wages. By the time the award could be enforced. M/s. Laxmi Devi Sugar Mills (P.) Ltd. was acquired under the provisions of U. P. Sugar Undertaking (Acquisition) Act, 1971 (hereinafter called the Acquisition Act) as amended by Ordinance No. 17 of 1984. Virendra Pratap Singh filed an application on 26.3.1985 for computation of his back wages before the Presiding Officer, Labour Court, Gorakhpur. This application was registered as Misc. Case No. 21 of 1985 u/s 33C (2) of the Act and by order dated 31.5.1986. the petitioner was directed to pay a sum of Rs. 34,098.69 which Virendra Pratap Singh was held entitled to recover. This order as well as the subsequent order passed for the realisation of the aforesaid amount gave rise to a number of Writ Petition Nos. 23817 of 1991. 15024 of 1993 and 15320 of 1986 as well as one more writ petition which was not traceable. All the four writ petitions were decided by a common judgment and order dated 5.5.1995 by Hon'ble Justice Paritosh K. Mukherjee. A sum of Rs. 47,746.41 was computed towards the back wages of Virendra Pratap Singh for the period March. 1987 to February, 1990. The Collector/District Magistrate, Deoria was directed to make payment of the aforesaid amount to Virendra Pratap Singh on the basis of the award dated 28th March, 1984. All the four writ petitions were disposed of and the matter was remanded back to Labour Court. Gorakhpur for hearing afresh the entire matter after impleading U.P. Sugar Corporation and giving due opportunity of hearing to all concerned and decide the same in accordance with law in view of the changed circumstances. It appears that after passing of the aforesaid order by this Court. Virendra Pratap Singh, respondent No. 5 approached the labour court by moving an application u/s 33 C (2) of the Act. The impugned order dated 17.12.1998 passed by the Labour Court indicates that the amount of back wages as computed for the period upto February, 1990 had been paid to Virendra Pratap Singh in compliance of the order passed by this Court on 5.5.1995 and that respondent No. 5. Virendra Pratap Singh is entitled to receive a sum of Rs. 2,43,210 from the petitioner as back wages for the period March. 1990 to September. 1997. In pursuance of the order dated 17.12.1998 passed by the Labour Court, a copy of which is Annexure-10 to the writ petition a notice has been issued to the General Manager of the U.P. State Sugar Corporation. Chhitauni, district Kushinagar on 30.12.1998, a copy of which is Annexure-11 to the writ petition.

5. Sri Khare learned counsel for the petitioner urged that since the petitioner was not a party to the industrial dispute No. 11 of 1982. It is not bound by the award

dated 28.3.1984 and that the petitioner cannot be saddled with the liability to make payment in view of the provisions of Section 3 of the Acquisition Act. 1971, which provides as follows :

"3. Vesting.--On the appointed day, every schedule undertaking shall by virtue of this Act. stand and be deemed to have stood transferred to and vest and be deemed to have vested in the Corporation free from any debt, mortgage charge or other encumbrance or lien, trust or similar obligation (excepting any lien or other obligation in respect of any advance on the security of any sugar stock and other stock in trade attaching to the other undertaking....."

6. It was also asserted that after the acquisition of private sugar mills, or (respondent No. 6) the Labour Court ceases to have any jurisdiction and cannot pass any order for the determination and the recovery of the amount of back wages.

7. Sri Rathore had repelled all the above submissions made by Sri Khare and pointed out that the order dated 5.5.1995 passed by this Court in Writ Petition No. 23817 of 1991 and the connected writ petitions gives a death blow to all the objections taken by the petitioner against the impugned order and the notice for recovery. According to Sri Rathore the petitioner Corporation is not only bound to obey the order of the Labour Court but is obliged to make payment immediately to the employee. Virendra Pratap Singh. as this Court has decided that the petitioner Corporation is bound by the award. Sri Rathore lamented that a poor workman is being harassed and dragged into litigation for no fault of his and has been deprived of all the benefits under the award.

8. I have given thoughtful consideration to the matter and find that the provisions of Section 3 of the Acquisition Act. 1971, are not applicable in the instant case. It is true that a schedule undertaking as defined under clause (h) of Section 2 of the Acquisition Act. 1971, vest in the Corporation, i.e.. U.P. State Sugar Corporation, is a Government Company, within the meaning of Section 617 of the Companies Act free from any debt, mortgage, charge or other encumbrance or lien, trust or similar obligation attaching to the undertaking. The dues of the petitioner for back wages do not fall in either of the category mentioned above. The claim of respondent No. 5 does not fall within the meaning of the expression debt, mortgage, charge or encumbrance or lien as contemplated in Section 3 of the Acquisition Act. As a matter of fact, it is Section 16 of the Acquisition Act, 1971, which is attracted to decide the controversy in hand. Section 16 of the Act runs as follows :

"16. Transfer of employees.--(1) Save as otherwise provided in this Section, every person (other than a director of a company in whom the ownership, management or control of the scheduled undertaking was vested immediately before the appointed day or of a subsidiary company of such company, or a relative, as defined in Section 6 of the Companies Act, 1956 (Act No. 1 of 1956), of such director or of proprietor or partner or lessee of the undertaking who was

employed exclusively in connection with the schedule undertaking immediately before the appointed day shall on and from that day become an employee of the Corporation and shall hold his office or service therein by the same tenure at the same remuneration and upon the same terms and conditions and with same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day if the undertaking had not been transferred to and vested in the Corporation, and shall continue to do so until his employment in the Corporation, and shall continue to do so until his employment in the Corporation is terminated or until his remuneration or other terms and conditions of services are revised or altered by the Corporation under or in pursuance of any law or in accordance with any provision which for the time being governs his service."

9. It is indubitable fact that respondent No. 5 was an employee of the erstwhile Private Sugar Mills namely M/s. Laxmi Devi Sugar Mills (P) Ltd. His services were terminated on 4.10.1980. On a reference made u/s 4-K of the Industrial Disputes Act Adjudication Case No. 11 of 1982 came into being in which after contest by the Private Sugar Mills, an award was made on 28.3.1984. The award in favour of Virendra Pratap Singh was that he shall be deemed to be in the service throughout as the order terminating his service was illegal and that he was held entitled to the entire back wages and the effect of the award, therefore, was that respondent No. 5 continued to be in the employment of a private Sugar Mills. By virtue of the award, respondent No. 5 was relegated to his original position and on the date of taking over of the Private Sugar Mills under the Acquisition Act, 1971, i.e., 28.10.1984, the respondent No. 5 was in fact, in reality an employee of the Private Sugar Mills. Since respondent No. 5 was employed exclusively in connection with the schedule undertaking immediately before the appointed day, he became an employee of the Corporation and continued to hold the office by same tenure at the same remuneration and upon the same terms and conditions and the same liability and privileges as he was enjoying in the schedule undertaking and the service conditions were not to stand altered on account of the taking over in view of provisions of Section 16 quoted above.

10. The submission that the petitioner-Corporation was not a party to the award is otiose for one simple reason that on the date on which the industrial dispute was raised and the award was made and published, the petitioner-Corporation was not in picture. On the date of the award, i.e., 28.3.1984 employer of respondent No. 5 was a Private Sugar Mills, i.e.. schedule undertaking which was acquired subsequently under the Acquisition Act, 1971 and came to be managed and controlled by the petitioner-Corporation. To sum up, it may be mentioned that the petitioner-Corporation was not in picture at all on the date on which the industrial dispute was raised and the award in the adjudication case came to be declared and published and as said above, respondent No. 5 in the light of the award was to be treated as an employee of the schedule undertaking, as, if his services were never terminated and since on the date of the taking over of the schedule undertaking respondent No. 5 was the existing employee, he

automatically became the employee of the petitioner-Corporation by virtue of provisions of Section 16. It is now too late for the petitioner-Corporation to assert that there does not subsist any relationship of employer and the employee between the petitioner and respondent No. 5 and that it is not bound by the award dated 23.8.1984 passed in favour of respondent No. 5. The payment of the back wages due to respondent No. 5 for the period February, 1990, has already been made by the petitioner-Corporation under the order of this Court dated 5.5.1995.

11. The learned counsel for the petitioner placed reliance on the decision of a Division Bench of this Court in Writ Petition No. 9578 of 1981 decided on 20.4.1998 a copy of which is Annexure-9 to the writ petition. The petition was dismissed on technical ground and does not decide the question whether the award made in favour of the workman binds the successor Corporation.

12. The assertion of the learned counsel for the petitioner that the Labour Court has no jurisdiction to take cognizance of the matter u/s 33C (2) of the Act is also wide off the mark, There is no lis pending between the petitioner and respondent No. 5 of which cognizance may be taken by the Tribunal, if any, constituted u/s 12 of the Acquisition Act, 1971. The dispute which was raised by respondent No. 5 already stood resolved and now it is a question of mere computation of the wages in proceedings u/s 33C (2) of the Act. The back wages are payable under the award made on a reference u/s 4K of the Act. The submission that respondent No. 5 was not entitled to maintain application u/s 33C (2) of the Act has been stated simply to be rejected as being meritless. The object and scope of the provision of Section 33C (2) of the Act have been elaborated in the decision of the Division Bench of Raj as than High Court in Jaipur Development Authority, Jaipur v. Labour Court and others, 1990 (6) FLU 81 (Raj HC--Jaipur Bench), as well as earlier decision of Delhi High Court in Delhi Transport Corporation Industrial Estate. New Delhi v. D. D. Gupta. Presiding Officer, Labour Court and another. 1978 (86) (36) 138. The well established position which has emerged, may be summarized as follows :

(i) If the claim of a workman Involves an adjudication of disputes which falls within the definition of industrial dispute as given in the Act, then that dispute cannot be resolved u/s 33C (2) of the Act.

(ii) If a claim, in the nature of an execution application relating to an industrial award or settlement, is made, then Section 33C (2) is available.

(iii) Even other claims of workmen not arising out of awards or settlements can be made the subject-matter of claim u/s 33C.

13. In the instant case, respondent No. 5 moved an application in the light of the decision of this Court dated 5.5.1995 before the Labour Court. The Labour Court was, therefore, duty bound to decide the application of the petitioner for computing the wages which are payable to him under the award. The application of respondent No. 5, was as a matter of fact, in the nature of an application to

execute or implement the award. The Labour Court, respondent No. 1, had jurisdiction and authority to entertain the application u/s 33C (2) for implementation of the award pursuant to the order of this Court. The Labour Court has computed that a sum of Rs. 2.43.210 is payable to respondent No. 5 for the period March. 1990 to September. 1997. This amount has been made payable with costs of Rs. 200. When the petitioner-Corporation failed to pay the aforesaid amount a notice. Annexure-11 to the writ petition, dated 20.12.1998 has been issued to the petitioner to pay a sum of Rs. 2,43,410 to respondent No. 5. No illegality or irregularity has been committed by the Labour Court, respondent No. 1 in passing the impugned order and issuing notice, Annexure-11.

14. Before parting, it would not be out of place to mention that the petitioner-Corporation has unnecessarily been overzealous in dragging the respondent No. 5 in long drawn litigation. The Acquisition Act, 1971, has been enacted for the acquisition and transfer of the Schedule undertakings in the interest of general public. The prefatory note (i.e.. the statement of object and reasons) appended to the Act makes it clear that the Act was brought on the statute book with an avowed object of curbing certain rampant evils as the owners of certain Sugar Mills of the State had created serious problems for the cane-growers and the labourers which resulted in adverse impact on the general economy of the area, where the mills are situate. It was thought that the only solution of this problem was that the State Government should take immediate steps to acquire the problem shooting undertakings with a view to renovating, rehabilitating and carrying out the improvements therein. The Act of 1971, therefore, as a social welfare measure to further the general interest of the community of workmen is opposed to the particular interest of the individual entrepreneurs. The theme of the Act besides rehabilitating the problematic establishments, is primarily to improve the lot of the workmen. The concept engrafted in the Statute required interpretation from that perspective without doing violence to its language. The beneficial aspect of the provisions of the Act of 1971, particularly, the provisions of Section 16, cannot be undermined or overlooked and has to be given full and liberal effect. Such an interpretation is intended to elongate the spirit and purpose not only of the legislation but of the Constitution and is bound to make the rights of the workmen a reality. In the instant case, as would be apparent, what the petitioner-Corporation has done is that instead of seeing to reason and taking on its establishment, respondent No. 5 Virendra Pratap Singh. It is forcing him to take recourse to multiple proceedings to enforce and implement the award made in his favour. It is common knowledge that the award proceedings are beset with several incongruities and obstacles. Once it has been given in favour of the workman, the employer should not be allowed to take recourse to subterfuge to deny the benefits under the award to the workman. A workman in whose favour an award for reinstatement has been passed by recording the finding that the termination order was illegal, cannot be kept out of job to endlessly keep waiting for the fruits of the award by keeping the litigation alive

and delaying the enforcement and implementation of an order. A workman is always pitted against a mighty employer, and, therefore, the Management would always keep the workman at bay in the matter of absorption. It would be difficult for the workman to work out their rights. The tardy and time consuming process is likely to consume a number of years which shall roll by without wages to the workmen, who cannot keep on fighting the litigation for an indefinite period having lost all hopes in getting the award/order implemented. In case the workman is left at the mercy of the employer in getting the order implemented and is involved in a long drawn litigation, the remedy provided to the workman under the Labour Laws would be worse than the disease. The right and remedy under the Labour Laws would be a teasing illusion and would be rendered otiose and practically compel the workman to remain at the sweet will of the employer. Such a conduct of the employer cannot be countenanced as it results in a situation where relatives of a patient are told by the operating Surgeon that the "operation is successful but the patient is dead".

15. The petitioner-Corporation has deliberately ignored to take into consideration the provisions of Section 16 of the Act of 1971, with a view to thwart the legitimate claim of the workman-respondent No.5, who is being forced to toss about from one corner to another. Undoubtedly, the petitioner-Corporation has resorted to an unfair labour practice, which is not only economically short-sighted but an unsound policy both from the point of view of the undertaking concerned and its workmen. The instances like the present one are such as are likely to disturb the tranquility, peace and harmony in the establishment generating labour unrest. The conclusion arrived at by the petitioner-Corporation files in the face of the very scope and ambit of provisions of Section 16 of the Act of 1971 and is bound to frustrate the very purpose, for which the schedule undertaking was taken over.

16. In nutshell, whole position boils down to this : that the respondent No. 5 Virendra Pratap Singh, who was employee of the erstwhile Private Mill, has by operation of law, become the employee of the petitioner-Corporation in view of the clear provisions of Section 16 of the Act of 1971. The respondent No. 5 was reinstated by means of the award, which was passed when the Private Mill was not taken over and, therefore, the question of the petitioner-Corporation being a party to the reference u/s 4K of the Act did not arise. It is expected that the Corporation which has been constituted to settle the problems of the labour will see to reason and should be amenable to the various observations made above.

17. In the result. I find that the grounds, on which the impugned order dated 11.12.1998. Annexure-10 to the writ petition, passed by the respondent No. 1 and consequential notice dated 30.12.1998, Annexure-11 to the writ petition, have been challenged are meritless and devoid of any substance.

The writ petition, therefore, fails and is accordingly dismissed.