

(2005) 03 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 4721 of 2004, W.P.M.P. No. 5543 of 2004 and
W.V.M.P. No. 428 of 2004

Veejay Lakshmi Engineering Works Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Industrial Disputes Act, 1947 — Section 10, 33C(2), 36, 36A

Citation : (2005) 03 MAD CK 0003

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : S. Jayaraman, for the Appellant; R. Arumugam and D.
Hariparanthaman, to 61, for the Respondent

Judgement

Prabha Sridevan, J.—By consent, the main writ petition itself has been taken up.

2. The management has filed this writ petition against the order passed in the application made u/s 33-C(2) of the Industrial Disputes Act (for short

I.D. Act) on the preliminary issue raised by the respondents herein. The respondents 3 to 61 filed the claim petitions before the Labour Court,

casing their entitlement on two settlements (1996 and 2000). The main objection of the petitioner is that when the second respondent has raised a

question u/s 36-A involving interpretation of the settlement and when the Government is yet to refer the dispute for consideration, the Labour

Court cannot decide 5 the applications u/s 33-C(2) of the Industrial Disputes Act.

3. It is also the case of the petitioner that the respondents 3 to 61 were not in employment on the date of the settlements i. e., in 1996 and 2000

and therefore, it is not open to them to say that the settlements do not involve

any disputed question requiring interpretation.

4. As regards the power u/s 33-C(2) of the Act, the following decisions were relied on by the learned Counsel for the petitioner:

(i) Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , wherein, the Supreme Court held as follows at pp. 398, 399 and 400 of LLJ:

8. ... The power of the Labour Court u/s 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the

executing Court's power to interpret the decree or the purpose of execution, where the basis of the claim is referable to the award or settlement,

but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the

same by the employer. This decision negatives instead of supporting the submission of learned Counsel for the respondents.

9. ... The proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the executing Court in

the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. It is

obvious that the power of the executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed

claim which requires adjudication for its enforcement in the form of decree. The executing Court, after the decree has been passed, is, however,

competent to interpret the decree for the purpose of its implementation. This position was settled by the above Constitution Bench decision and

has been the consistent view of this Court ever since then.

11. In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, it was held with reference to the earlier decisions that

a proceeding u/s 33-C(2) being in the nature of an execution proceedings, it would appear that an investigation of the alleged right of re-

employment is outside its scope and the Labour Court exercising power u/s 33-C(2) of the Act cannot arrogate to itself the functions of

adjudication of the dispute relating to the claim of re-employment. Distinction between proceedings in a suit and execution proceedings thereafter

was pointed out. It was indicated that the plaintiffs right to relief against the defendant involves an investigation which can be done only in a suit and

once the defendant's liability had been adjudicated in the suit, the working out

of such liability with a view to give relief is the function of an execution proceeding. This distinction is clearly brought out in that decision as under:

In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of-

- (i) the plaintiff's right to relief;
- (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and
- (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function or an execution proceedings.

Determination (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution

proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not

an execution proceedings. Since a proceeding u/s 33-C(2) is in the nature of an execution proceedings it should follow that an investigation of the

nature of determinations (i) and (ii) above is, normally, outside its scope, it is true that in a proceeding u/s 33-C(2), as in : an execution proceeding,

it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But

that is merely "incidental". To call determinations (i) and (ii) "incidental" to an execution proceeding will be a perversion, because execution

proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a

process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33-C(2) that Court must clearly understand the

limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make

adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "incidental"

to its main business of computation. In such cases, determinations (i) and (ii) are not "incidental" to the computation. The computation itself is

consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial

Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal*, that a workman cannot put forward a claim in an

application u/s 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an

industrial dispute which requires a reference u/s 10 of the Act."

12. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on

that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier, adjudicated or recognised by the

employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is

treated as incidental to the Labour Court's power u/s 33-C(2) like that of the executing Court's power to interpret the decree for the purpose of

its execution.

(ii) *Indian Tourism Development Corporation Vs. Labour Court and Others*, , wherein the Court held that the power under Sections 33-C(2) does

not empower the Labour Court to interpret the award or settlement where a dispute arises in that regard between the workman and the employer.

It should, in this context, be remembered that the power given to the Labour Court u/s 33-C(2) empowers the Labour Court to enable the

workman to execute or implement his existing individual undisputed rights arising under an award or settlement. But where a dispute between the

workman and the employer arises in regard to interpretation of any provision of the award or settlement the said dispute can be resolved only by

following the procedure prescribed u/s 36-A.

(ii) *R.D. Rajendran v. K.T.M. Abdul Khader Chairman Hi-Brite Lamps Ltd., Madras, and Ors.* 2003 (2) LLN 93, wherein the Supreme Court

held that the settled position in law for invoking Section 33-C(2) of Industrial Disputes Act, 1947, is, in Para 6, at page 96:

(1) There must be a pre-existing right on the workman to file an application u/s 33-C(2) of the Act;

(2) While dealing with an application u/s 33-C(2) of the Act, the Labour Court is in a position of an executing Court;

(3) The Labour Court is called upon to compute and calculate the monetary benefits only on the basis of pre-existing right of the workman;

(4) The Labour Court cannot entertain and adjudicate upon a petition u/s 33-C(2) when the entitlement itself is in dispute; and (5) An application

u/s 33-C(2) is not maintainable, if the petition is filed on disputed facts which requires adjudication by the Labour Court.

5. Supporting the writ-petitioner, the learned Counsel for the second respondent submitted that if the application u/s 36-A of the Industrial

Disputes Act is decided, then the workmen will be entitled to their claims straightaway without having to resort to Section 33-C(2) of the I.D. Act.

6. The learned Counsel for the respondents 3 to 61 submitted that the writ petition, ought not to have been entertained at all and referred the

following judgments:

(i) Belersdorf India, Ltd. v. K.R. Gopalan and Anr. 1998 (2) LLN 510, wherein, the Supreme Court held that inasmuch as it is open to the

petitioner to urge the objection regarding the jurisdiction when, the ultimate order of the second respondent is challenged, it is not possible for the

High Court to exercise the judicial review in such matters at this stage.

(ii) National Council for Cement and Building Materials Vs. State of Haryana and Others, , wherein the Supreme Court held that 3 the Court,

cannot shut its right, to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on

the preliminary issue is immediately challenged 3 in one or the other forum including the High Court and proceedings in the reference are stayed

which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of. The facts in the instant case indicate that the

National Council for Cement and Building Materials adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of

industrial dispute on merits. It raised the question whether its activities constituted and "industry" within the meaning of the Industrial Disputes Act

and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a

preliminary issue, but subsequently, by change of mind, it decided to hear the issue along with other issues on merits at a later stage of the

proceedings. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at the interlocutory stage and

dismissed the petition filed under Article 226 of the Constitution. The decision of

the High Court is fully in consonance with the law laid down by

this Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe, ; S.K. Verma Vs. Mahesh Chandra and Another, ; D.P. Maheshwari Vs.*

Delhi Administration and Others, ; Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited,

(iii) *D.P. Maheswari v. Delhi Administration (supra)* wherein, the Supreme Court held as follows: 1983 11 LLJ 425 at pp. 426 and 427:

1. ... We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery

and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should

High Courts in the exercise of their jurisdiction under Article 226 of the Constitution, stop proceedings before a Tribunal so that a preliminary issue

may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court

under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by

dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them....

(iv) *Pradeep Kumar Jain Vs. Citibank and Another*, wherein the Supreme Court observed that the Labour Court should decide all the issues

together and shall not split the issue so that the proceedings may come to an end at the earliest.

So, on this ground, the writ petition deserves to be dismissed.

7. He also submitted that it is open to the Labour Court u/s 33-C(2) of the I. D. Act, to decide questions regarding the interpretation of the

settlement. For this purpose, relevance was placed on *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.,* .

8. Section 36-A of the I.D. Act reads follows:

36-A. Power to remove difficulties - (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 Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard,

decide such question and its decision shall be final and binding on all such parties.

9. Disputes between the parties have been the subject- matter of the earlier writ petitions. In W.P. No. 27029 of 2003, the second respondent

herein prayed for a mandamus forbearing the Labour Court from adjudicating the claim petition till the clause in the settlement are given

appropriate interpretation by the labour forum. The said writ petition was disposed of on September 26, 2003, as follows:

Since the said demand is before the first respondent, I am not inclined to grant the prayer sought for as such. But the first respondent is directed to

consider the petitioner's request for referring the demand for adjudication and pass orders in accordance with law. The said order should be

passed within three months from the date of receipt of a copy of this order.

The first respondent in that case was the Government.

10. Subsequently, W.P. No. 27418 of 2003 was filed by the second respondent whose attempt to get itself impleaded in the claim petition was

rejected by the Labour Court. When the matter came up for hearing, the learned Counsel for the respondents 3 to 61, who were the contesting

respondents, withdrew the objection for impleading the second respondent. According to the learned Counsel for the respondents 3 to 61, it was

decided that it would be better to have the second respondent impleaded than to prolong 5 the matter, since the workmen's claim petitions were

still pending consideration. Para. 6 of the order passed by Justice Sri D. MURUGESAN, on December 15, 2003 in W.P.No. 27418 of 2003

reads as follows:

6. In view of the above fair stand taken by the workers, the question of going into the rival contentions does not arise. Accordingly, the writ

petition is allowed and the impugned order is set aside.

Petitioner-union is impleaded as one of the parties in each of the claim petitions and the first respondent Labour Court, Coimbatpre is directed to

pass final orders, after giving an opportunity to all the parties, as expeditiously as possible. Sri S. Vaidyanathan, learned Counsel for the petitioner

and Sri D. Hariparanthaman, learned Counsel for the respondents 4 to 62 agreed for the disposal of the claim petitions on or before the end of

May 2004. However, Sri S. Jayaraman, learned Counsel for the management opposed for fixing the data on the ground that the dispute as to the

interpretation of the settlement is pending with the Government at the instance of the petitioner. While disposing of the claim petition, the Labour

Court is directed to take into consideration of the above fact and dispose of the claim petition on or before the end of May 2003. No costs

11. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, , the Supreme Court held that ""while there are limitations on the powers of the

Labour Court u/s 33-C(2) of the I.D. Act, similar to the limitations imposed upon to the executing Court, the Labour Court would be competent to

interpret the award or settlement on which the workmen based his claim u/s 33-C(2). The Supreme Court observed that:

Section 36 of the Act provides for interpretation of any provision of an award or settlement where any difficulty or doubt has arisen as to the said

interpretation and generally this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or

settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement.

12. In this case, the question u/s 36-A of the I.D. Act for interpretation of the settlements has been raised not by the employer but by the second

respondent which is a union. The Labour Court has rejected the preliminary objection. It has held that all the issues will be considered and decided

as directed by Justice Sri D. MURUGESAN in W.P.No. 27418 of 2003. The approach is perfectly in order and cannot be attacked. This writ

petition cannot be entertained since it arises out of the decision on the preliminary issue.

13. In these circumstances, taking into account the two orders referred to above, the writ petition is disposed of on the following terms:

The Labour Court shall consider the claim petitions of the workmen in accordance with law, after giving opportunity to all the parties, within a

period of six months from the date of receipt of a copy of this order. While deciding their claims, if the Labour Court has to interpret any

provisions of the settlement, as observed in the judgment of the Supreme Court, it is open to it to do so. But, if the Labour Court comes to the

conclusion that, the particular question raised u/s 36-A of the I.D. Act cannot be decided in an application u/s 33-C(2), the Labour Court shall

give its decision according to law. In the mean time, if the Government has referred the question u/s 36-A for adjudication, the parties hereto may

make an appropriate application to the Labour Court for hearing of the industrial dispute and the claim petition. Together go that the claims made by the first respondent need not be postponed indefinitely.

14. The writ petition is disposed of accordingly. No costs. The connected W.P.M.P. and W.V.M.P. are closed.