
(2018) 02 KAR CK 0016
In the Karnataka High Court
Case No : 26839 of 2017 (L-RES)

VIMARSH DEVELOPMENT SOLUTIONS PVT. LTD

APPELLANT

Vs

SYLVIA KARPAGAM & ANR

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Industrial Disputes Act, 1947, Section 10(1), Section 33-C(2) - Reference of disputes to Boards, Courts or Tribunals

Citation : (2018) 02 KAR CK 0016

Hon'ble Judges : Raghvendra S. Chauhan

Bench : Single Bench

Advocate : RAJESWARA P. N., MAITREYI KRISHNAN, CLIFTON D. ROZARIO

Final Decision : Dismissed

Judgement

1. The petitioner has challenged the legality of the order dated 30.01.2017, passed by the II Additional Labour Court, Bengaluru, whereby the

learned Labour Court has rejected the application filed by the petitioner for taking up a particular issue as a preliminary issue and deciding the

same.

2. Briefly the facts of the case are that the petitioner is a development consulting organization. It provides services for management, and

implementation of projects related to health, rural development, livelihood and poverty alleviation, elementary education, and nutrition etc. In order

to carry out its work, the petitioner entered into a professional service contract with the respondent No.1, Ms. Sylvia Karpagam. According to the

contract of service, she was required to train trainers, within twenty-five days, in batches, and manage the clinical, anthropometric and biochemical

components of the fields survey including health investigators. She was paid professional fees of Rs.3,500/- per day. In order to train the batches, the respondent No.1 underwent training for twenty-eight days at Puri. However, after a period of one year, on 06.01.2015, the respondent No.1 abruptly resigned from her assignment. On 16.06.2015, the respondent No.1 issued a notice, wherein she claimed that she is entitled to an amount of Rs.98,102/- for having performed her part of contract from 18.08.2014 to 07.02.2015. In turn, the petitioner refuted her claims by its reply dated 29.07.2015. The petitioner, in fact, claimed an amount of Rs.50,31,000/- from the respondent No.1 being the cost of loss, defamation suffered, and amount spent on her training. Despite the fact that the contract of service contained an arbitration clause, the respondent No.1 did not invoke the arbitration clause. Instead, on 11.09.2015, she filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 ("the Act", for short), and claimed an amount of Rs.98,102/-. On 11.09.2015, the petitioner immediately filed a detailed objection before the learned Labour Court. On 19.11.2016, the petitioner also filed I.A.No.2 and prayed the learned Labour Court to dismiss the claim of respondent No.1 for want of jurisdiction. The respondent No.1 filed her detailed objection to the said application. However, by order dated 30.01.2017, the learned Labour Court dismissed the application filed by the petitioner. Hence, this petition before this Court.

3. Mr. P.N. Rajeswara, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, the respondent No.1 happens to be a Doctor, who is working as a Doctor, and she was being paid a consolidated fees of Rs.3,500/- per day. Therefore, she does not fall within the definition of "workman" contained in the Act. Since she is not covered by the definition of "workman", the petitioner was justified in filing its application claiming that the learned Labour Court did not have the jurisdiction to entertain an application under Section 33-C(2) of the Act.

Secondly, the petitioner was justified in requesting the learned Labour Court that the issue, whether the respondent falls within the definition of

"workman" or not, should be decided as a preliminary issue. Relying on the case of Tara and Others v. Director, Social Welfare and Others

[(1998) 8 SCC 671], the learned counsel pleads that the said issue should have been tried as a preliminary issue by the learned Labour Court.

Thus, the learned Labour Court should have given a finding on the said issue before dealing with the application under Section 33-C(2) of the Act.

Therefore, the conclusion drawn by the learned Labour Court, that it is required to adjudicate all the issues simultaneously, is legally unsustainable.

Hence, the impugned order deserves to be set aside by this Court.

4. On the other hand, Ms. Maitreyi Krishnan, the learned counsel for respondent No.1, submits that the Act is a beneficial piece of legislation

enacted for the benefit of the labour class, who even today is considered as a weaker section of society. Therefore, the purpose of the Act is to

protect and promote the interest of the labour class. Since the workman is pitted against the might of the management, since the management can

delay the final outcome of an industrial dispute pending before a Labour Court or Industrial Tribunal by raising frivolous preliminary issues, it is

better if all the issues are tried together, and final award is passed. In order to buttress this plea, the learned counsel has relied on the case of D. P.

Maheshwari v. Delhi Administration and Others [(1983) 4 SCC 293], and on the case of National Council for Cement & Building Materials v.

State of Haryana and Others [(1996) 3 SCC 206].

Secondly, an application under Section 33-C(2) of the Act is like an execution proceeding. Therefore, the very purpose of filing an application

under Section 33-C(2) of the Act is to expeditiously decide the issue, whether and to what extent any money is owed by the management" In case

preliminary issue were decided separately, the decision could be challenged by a clever management firstly before this Court, and subsequently

before the Hon"ble Supreme Court. Therefore, the execution could be delayed endlessly. Needlessly, the workman would be kept in animated

suspension till the final decision is given on a preliminary issue. But such delay tactics should not be permitted as it would defeat the very purpose

of the Act. Therefore, according to the learned counsel, the learned Labour Court was justified in dismissing the application filed by the petitioner,

and in concluding that all the issues should be decided together by the learned Labour Court.

Lastly, the learned counsel has pleaded that this case has been pending before

this Court for the last eight months. Within this period, the application under Section 33-C(2) of the Act could have been decided by the learned Labour Court. But the respondent continues to wait for justice to be done by the learned Labour Court.

5. In rejoinder, the learned counsel for the petitioner submits that the cases of D. P. Maheshwari (supra) and National Council for Cement & Building Materials (supra) are distinguishable on the factual matrix. For, both the cases arise under Section 10 (1) of the Act, and not under Section 33-C(2) of the Act. Therefore, what may be valid for an industrial dispute under Section 10 (1) need not necessarily be true for an application under Section 33-C(2) of the Act.

6. Heard the learned counsel for the parties.

7. Undoubtedly, the Act was created in order to protect and promote the interest of the labour class. Undoubtedly, the workmen are pitted against the might of the industrialists, or Management.

8. In the case of D. P. Maheshwari (supra), the Hon"ble Supreme Court has observed as under:

1. It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. 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 this 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. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues"".

9. The observations made by the Hon"ble Court is as much applicable to an industrial dispute raised under Section 10 (1) of the Act, as it will be applicable to an application filed under Section 33-C(2) of the Act. After all, in order to deny the payment to a workman who has filed an application under Section 33-C(2) of the Act, a clever Management can raise a preliminary issue, and pray that the issue should be decided at the first instance. Having the issue posted as preliminary issue, the Management can take recourse to filing an appeal before this Court, and eventually approach the Hon"ble Supreme Court by filing a Special Leave Petition. Thus, the Management can drag the workman through a roller-coaster ride of endless litigation. Meanwhile, the workman would continue to hopelessly hope that justice would be done while he/she is left out in the cold. Obviously, this was not the intention of the Act. Since an application under Section 33-C (2) of the Act is like an execution proceeding, it should

be decided as expeditiously as possible in order to grant, or refuse to grant the relief prayed for by the workman. In fact, it is in the interest of

industrial peace to decide the industrial dispute as soon as possible so as to prevent industrial harmony from being damaged. Therefore, the

observation made in the case of D. P. Maheshwari (supra) equally applies to a case filed under Section 33-C(2) of the Act.

10. Thus, the learned Labour Court was justified in concluding that it must adjudicate upon all the issues simultaneously rather than in piecemeal.

11. For the reasons stated above, this Court does not find any merit in the present petition. It is, hereby, dismissed.

12. However, this Court directs the learned Labour Court to complete the proceedings and to decide the application filed by the respondent No.1

under Section 33-C(2) of the Act, on or before 30.06.2018. Both the parties are free to raise all the contentions available to them before the

learned Labour Court. It is also hereby clarified that any observation made with regard to the tactics which may be used by the Management need

not necessarily apply to the petitioner.