

(1996) 12 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Appeal No's. 4669 of 1994 and 952, 1263 and 1264 of 1995

Weston Electronics Ltd

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

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

Citation : (1997) 1 AD 538 : (1997) 65 DLT 587 : (1997) 1 ILR Delhi 520 : (1997) 1 LLJ 1230

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : A.K. Singhia, Sanjay Dhar, Madan Lokur, S.N. Gupta and P. Bhushan, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) These writ petitions raise common question of law regarding construction of Section 33-C(1) of the Industrial Dispute Act, 1947 (for short "the Act") and scope of power of the appropriate government under this provision.

(2) The challenge in all the writ petitions is to the action taken by the government u/s 33-C(1) of the Act. The employers (hereinafter described as "Management") are writ petitioners. The workmen are the respondents besides the Government and Officers of Labour department (hereinafter described as. "Government").

(3) With a view to appreciate how the controversy has arisen we may notice facts of one of the writ petition (C.W.P. 4669194 M/s. Weston Electronics Ltd. Vs. Union of India and others). The case of this company in brief is as under:--

(4) The Company is engaged in manufacture of electronic components etc., for the last more than 25 years. The registered office and corporate office of the company is at 43-A, Okhla Industrial Estate, New Delhi with one of the unit at 240, Okhla Industrial Estate and other establishments at various places in Delhi,

amongst others at 6, Community Centre, East of Kailash, New Delhi, Shed No. A-7, Okhla Industrial Area, Phase-I. Plot No. 5, Sector No. 6, R. K. Puram and 15, Jain Bhawan, Near Gurudwara in Tikri Village, Opposite Vasyusenavad Bagh Gate, New Delhi. In this writ petition Respondent No. 5 is the Union formed by the workmen of the petitioner. In November, 1992 petitioner after due discussion with the representatives of the Union, for economic and commercial reasons, decided to go in for reorganisation in its establishment. On 6th January, 1994 by a general notice all workmen were informed that it has been decided to vacate factory building at 240, Okhla Industrial Estate on account of certain economic and commercial reasons and the Management is trying to hire other building for vacating this building and the workmen will have to go to the new acquired building on the above said building being vacated. By another general notice dated 31st January, 1994 the workmen were notified, with reference to earlier notice dated 6th January. 1994 that in order to vacate premises at 240, Okhla Industrial Estate, another building had almost been obtained and negotiations are at the final stages and it is possible that the work may be started in the new building in the first week of February 1994. 524 Thus, the workmen were informed through this general notice that directions to go to new building to be hired soon may be given to them at any time without any prior notice. On 7th February 1994 the petitioner decided to shift 194 workers working at 240, Okhla Industrial establishment to be shifted to its other establishment inasmuch as 23 persons were asked to report for duty at corporate Office, 10 at Community Centre, East of Kailash, 58 at A-7 Okhla Industrial Area, Phase-I, 13 at Plot No. 5, Sector 6, R.K. Puram, Delhi and 91 at Jain Bhawan, Vasyusenavad Bagh Gate, New Delhi. Some of the workmen reported for duty at the above places, some settled with the petitioner expressing unwillingness to serve, other workers numbering about 74 resorted to demonstrations and started indulging in illegal strike at the establishments of the petitioner. For smooth working and functioning at its establishments the petitioner filed a suit for injunction (Suit No. 414/94) on 22nd February 1994 wherein Civil Court passed an order of injunction restraining, conducting or holding any demonstration within 50 meters from the main gate of its premises establishment and the order of injunction was in force. On 25th February, 1994 the Union wrote a letter to Labour Commissioner objecting to the transfer of workers from the aforesaid premises No. 240, Okhla Industrial Estate, to various other places. It was claimed that the transfer orders were made by the management with a malafide intention to disrupt the Union and that the argument of the management that the transfers are because of economic reasons was merely an eye-wash. On 16th March. 1994 a meeting was held with the Minister of Labour of Delhi Govt. which was attended by the representatives of the management, workmen and officers of the Labour Department and the Delhi Government. The minutes of the meeting have been placed on record. According to the minutes the management was ready to give in writing that it had decided to sell building situate at premises No. 240, Okhla Industrial Estate. On behalf of the workmen the stand taken in the said meeting was that if the management is ready to put workmen at the most at two units

then the workmen were ready to attend the duly. The management objected to this stand of the workmen. The stand of the management was that the workmen will have to go on duly in 5 units as referred to above. It was stated that it is impossible to put all the workmen in two units. The workmen did not agree to the suggestion of the management. On such an attitude being adopted by both the sides the Minister advised that it was proper both for management and the workmen that the workmen should abide by directions issued by the management because no change had been made in their conditions of employment. Since, both the sides stuck to their position the matter could not be settled. In another letter dated 4th April, 1994 sent by Union to the Labour Commissioner the Union stated that the management is guilty of (1) imposing illegal lockout; (2) illegal and malafide transfer of employees under the guise of management policy and this was an unfair labour practice.

(5) On 7th June, 1994 the management took action against the workmen or their non-joining at the places of duly assigned to them since 7th February, 1994. In the notice dated 9th June, 1994 the management has referred to various, opportunities granted to the workmen to join duly and has also referred to meeting held with the Labour Minister in which it is stated to have been suggested by the Labour Minister that the workmen should report for duly. The notice states that thereafter another chance was granted to the workmen to report for duly at the assigned places of duly. The notice records that the workmen have absented from duly for the last 4 months unauthorisedly and these circumstances show that the management has followed principles of natural justice but the workmen have failed to present themselves for duly inspire of chances being given to them time and again. As per this notice the workmen have left the services with organisation. Under the Standing Orders the workmen were advised to collect their outstanding amount from the places of their duly assigned to them on any working day. According to Industrial Establishment (Standing Orders) Act, 1946 as also as per the contract between the management and workmen as contained in the appointment letter, the job is transferrable. According to the Standing Order 13(4) any workman who absents himself without permission for more then 8 consecutive days, shall be deemed to have abandoned his service.

(6) On 9th June, 1994 itself the Union wrote a letter to the Assistant Commissioner referring to its various complaints pending regarding the illegal lockout of Unit at premises No. 240, Okhla Industrial Area and to illegal transfer of workers to aforesaid 5 different sites, stating that workers have been reporting for duly at premises No. 240, but were not being taken on duly and have not been paid wages for 4 months. It states that at the said sites there are no proper facilities, work or other requirements as per factories Act but the workmen had decided to report for duly under protest on the said 5 sites requesting Assistant Labour Commissioner to intervene in the matter and ensure that the workmen are permitted to join duly under protest. The report dated 10th June, 1994 of inspector, Labour Department shows that on the basis of the complaint of the

Union the Inspector visited the premises of the petitioner at 43-A, Okhla Phase-III and at 15, Jain Bhawan, Tikri Village and the workmen reported for duty at these two sites. On behalf of the management it was slated that the workmen should furnish their joining reports and reasons for the absence for reporting late on transfer on 7th February, 1994 before they could take up their duties. According to the management this report shows that at these two sites it was ready to take the workmen on duty but they were not willing to give joining reports and also that the Inspector did not visit other sites and that the workmen did not report for duty at other sites. On 14th June, 1994 petitioner wrote to Assistant Labour Commissioner that the workmen had unauthorisedly absented themselves for 4 months and did not pay heed to the advice of the management, Labour Department and the Labour Minister and have voluntarily abandoned their service on their own accord of which the workmen have been duly informed and, Therefore, the management has removed the names of these workers from the rolls of the company and intimations have been sent to all the absenting employees.

(7) For the first time in communication dated 13th July, 1994 sent by Union to the Assistant Labour Commissioner the Union took the stand about the illegal retrenchment of the workmen. This communication states that the workmen have been reporting for duty at 5 sites. According to the management this claim of the workmen was not correct since the report of the Inspector referred to above itself shows that the workmen had reported for duty only at two sites and the management was willing to take the workmen on duty as is apparent from the report of the Inspector dated 10th June, 1994. The management in its letter dated 22nd August, 1994 sent to Assistant Labour Commissioner summarised its stand that the workmen had persistently refused to join duty at the five sites without any sufficient cause and that it is not the case of retrenchment as claimed by the workmen and, Therefore, the provisions of Section 25-N read with section 2(00) are not attracted and, Therefore, no proceedings u/s 33-C(1) could be initiated.

(8) The Union by its communication dated, 25th August, 1994 addressed to the petitioner stated that the workmen are entitled to wages and other benefits u/s 33-C of the Act and demanded that they should be paid monthly wages from 9th June, 1994 onwards. An application dated 15th September, 1994 was filed by the Union with Secretary, Labour, of Delhi Government demanding Rs. 2,20,954.00 on account of wages u/s 33-C(1) in respect of 71 workmen for the period from 8th June, 1994 to 31st July, 1994. The application of the Union was sent to the management. The management objected to the claim of the workmen by sending reply dated 9th October, 1994, inter alia, stating that Section 33-C(1) of the Act has no applicability since the workers have not been retrenched and, Therefore, the question of violation of Section 25-N(7) of the Act does not arise and also stating that u/s 33-C(1) any dispute between the employer and the workmen cannot be determined. The management objected to the jurisdiction of the Government to initiate proceedings u/s 33-C(1) and took the stand that no

recovery certificate could be issued.

(9) On 31st October, 1991 the impugned recovery certificate was issued stating that Rs. 2,20,954.00 was payable by petitioner to 71 workmen for 22 days for the month of June, 1994 and for full month of July, 1994 u/s 33-C(1) of the Act which was to be recovered as arrears of land revenue.

(10) The stand of the respondents (the Government as well as the workmen) is that the order of transfer of the workmen was mala fide with a view to harass them so" that they may leave the job and that it is a clear case of retrenchment,

(11) It is not necessary to notice the facts of other writ petitions. In substance the stand of the management in all the writ petitions is that there was no retrenchment; the management was ready to take the workmen on duty but the workmen were not willing to join the duties and were on illegal strike and that the Government u/s 33-C(1) of the Act has no" power or jurisdiction to adjudicate highly disputed fact?, between management and workmen.

(12) According to the respondents, the workmen have been retrenched within the meaning of Section 2(00) of the Act without prior permission of the appropriate Government as required by Section 25-N of the Act. Therefore, they are entitled to all the benefits including salary and thus recovery certificate u/s 33-C(1) of the Act have been rightly issued.

(13) The petitioners say that there is considerable material in the form of correspondence etc. between them and the Government and also the workmen which clearly demonstrates that the petitioners were always ready and willing to provide work to the workmen who had resorted to illegal strike, it has been further submitted that assuming there is a dispute as to whether it is a case of illegal strike by the workmen or retrenchment, the appropriate Government in exercise of power u/s 33-C(1) has no power to adjudicate such a dispute and the only appropriate remedy available to the workmen is to raise an industrial dispute and seek a reference to Labour Court Industrial Tribunal under the Act.

(14) It would be useful to first notice certain provisions of the Act.

(15) Section 33-C(1) deals with the recovery of money due to a workman from an employer. This section, inter alia, provides that 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 V-B the workman 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. Section 39, inter alia, provides that where the appropriate Government is a State Government it may by notification in the official gazette direct that any power exercisable by it under the Act or rules made there under shall, in relation to such matters and subject to such conditions, if any, as may

be specified in the direction to be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification. Section 39 does not lay down any minimum qualification to be possessed by officers or authority to whom the powers of the State Government may be delegated.

(16) Section 33-C(2), *inter alia*, provides that where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed then the question may, subject to any rules that may be made under the Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding 3 months. Section 33(4) stipulates that the decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1). and The minimum qualifications of Presiding Officer of a Labour Court have been stipulated in Section 7 of the Act which shows that only a person with a judicial background can be appointed as the Presiding Officer of the Labour Court.

(17) Section 10 of the Act provides for reference of disputes to Boards, Courts or Tribunals. This Section, *inter alia*, provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matters specified in the Second Schedule to a Labour Court for adjudication or refer the dispute or an matter appearing to be connected with or relevant to the dispute, whether it relates to any matters specified in the Second Schedule or Third Schedule to a Tribunal for adjudication. Under the Second Schedule the dispute regarding the illegality or otherwise of a strike or lockout are referable to a Labour Court. Under the Third Schedule the dispute regarding retrenchment of workmen and closure of establishment are referable to a Tribunal for adjudication. Section 7A shows that only those persons who have judicial background are entitled to be appointed as the Presiding Officer of a Tribunal.

(18) Chapter V-B makes special provisions relating to lay-off, retrenchment and closure in certain, establishments. Section 25-N is part of Chapter V-B. This Section, *inter alia*, provides that no workman employed in any industrial establishment to which Chapter V-B applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the prior permission of the appropriate Government or such authority as may be specified by that Government by notification, in the Official Gazette has been obtained on an application made in this behalf. Sub-section 7 of Section 25-N states that where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which

the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as it no notice has been given to him.

(19) Section 2(00) defines retrenchment to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :- (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contained a stipulation in that behalf; or (bb) termination of the service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein: or (c) termination of the service of a workman on the ground of continued ill-health.

(20) Bearing in mind the legislative history as discernable from the aforesaid provisions we will now consider the scope of Section 33-C(1) to determine whether the appropriate Government has any power of adjudication in case of bonafide dispute between employer and workman on the aspect of settlement or award or applicability of Chapter V-A or V-B and the extent of such a power, in case we come to the conclusion that adjudication is permissible while exercising power u/s 33-C(1). For determining this aspect, we may first notice some of the decided cases.

(21) In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, the question that came for consideration was the scope of Section 33-C(2). The Supreme Court held that Section 33-C(2) is wider than Section 33-C(1). The Supreme Court held that in construing Section 33-C it has to be borne in mind that the construction should not be as broad as to bring within the scope of Section 33-C cases which would fall u/s 10(1). The policy of the Legislature in enacting Section 33-C has to be also kept in view, namely, to provide a speedy remedy to the workman to recover the amount that may be due to the workman from his employer. While dealing with the scope of Section 33-C(2) the Supreme Court held that on a fair and reasonable construction of Section 33-C(2) it is clear that if a workman's right to receive the benefit is disputed that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed nothing more needs to be done and Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed the Labour Court must deal with that question and decide whether the workman- has a right to receive the benefit as alleged by him and it is only after the Labour Court answers this point in favor of the workman that the next question of making the necessary computation can arise. The Supreme Court rejected the contention that if a dispute is raised about workman's right to

receive the benefit that cannot be determined by the Labour Court. The Supreme Court noticed that Section had not used the word that "where such workman is admittedly or admitted to be, entitled to receive such benefits" and held that the acceptance of appellant's construction would necessarily introduce the addition of the words "admittedly or admitted to be" in section 33-C(2) which was not permissible. The Supreme Court also said that acceptance of such a construction would mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by Sub Section (2) because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust. the jurisdiction of the Labour Court to entertain the workman's application. Comparing the language used in section 33-C(1) with the language used in Section 33-C(2) the Supreme Court held that claims made u/s 33-C(1) by itself can be only claims referable to settlement, award or relevant provisions of Chapter V-A. This decision would be equally applicable to claims referable to Chapter V-B.

(22) In *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, scope of Section 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 came up for consideration. That section reads as under:-

"WHERE any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him. and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector and the collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

(23) IN. *Kasturi & Sons*" case the employer petitioner company before the Supreme Court was the proprietor of a daily newspaper *The Hindu*". The first respondent N. Salivateswaran, a Journalist had been supplying news to various newspapers and journals, one of which was *The Hindu*. That supply was under an agreement under which respondent No. 1 was being paid a fixed monthly honorarium. Contrary to the advice the instructions of the employer the first respondent left India for Zurich on 1st May 1956 and thereupon the employer relieved him of his duties and terminated, with effect from 1st March 1956, the arrangement under which he was supplying news to the *Hindu*. Respondent No. 1 returned to India in July 1956 and requested the employer to reconsider the decision but the employer did not think that any case for reconsideration had been made out. Thereupon the first respondent made an application u/s 17 of the aforesaid Act. The State of Bombay nominated a retired Ics Officer u/s 17 of the Act for the purpose of enquiry into the first respondent's application and requested him to examine the claim made by the first respondent and in case he

was satisfied that any money was due, to issue "a certificate for that amount to Collector of Bombay for further action as provided u/s 17. Respondent No. 1 claimed a sum of Rs. 1,57,172 from the petitioner. In its written statement the employer besides disputing the whole of the claim made by the first respondent also contended that the person nominated had no jurisdiction to go into the merits arising from the first respondent's application. According to employer the first respondent had to establish his claim in the appropriate civil court. On the preliminary issue of jurisdiction the nominated authority held that he had jurisdiction to deal with the matter and that it was unnecessary to direct the first respondent to establish his claim in the ordinary civil court. This order led to the employee.- filing a petition under Article 32 of the Constitution before the Supreme Court. The case of the petitioner/ employer before the Supreme Court was that Section 17 provides only for a mode of recovery of any money due to a working journalist and it does not empower the State Government or authorities specified by the State Government to act as a forum for adjudicating upon the merits of the disputed claim. Before the Supreme Court one of the contentions of the employer was that the condition precedent for application u/s 17 is a proper determination by a competent authority or the court of the amount due to- an employee from the employer and it is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by Section 17 without prejudice to any other mode of recovery available to him. According to the employer the State Government or the authority specified by the State Government had to- hold a summary enquiry on a very narrow and limited point. Is the amount which is found due to the employee is still due when the employee makes an application u/s 17 or has any amount been paid, and, if yes, how much still remains to be paid ? It .is only a limited enquiry of this type which is contemplated by section 17. Within the scope of the enquiry permitted by Section 17 are not included the examination and decision of the merits of the claims made by the employee. When the section refers to the application made by the employee for the recovery of money due to him. it really contemplates the stage of execution which follows the passing of the decree or the making of an award or order by an appropriate court or authority. This construction placed by the petitioner was accented by the Supreme Court. This construction was held to" be more reasonable and more consistent with the scheme of the Act. The Supreme Court also observed that it was significant to note that the State Government or the authority mentioned in Section 17 had not been clothed with normal powers of a court or a Tribunal to hold a formal enquiry. The Supreme Court also observed that if the Legislature had intended that the enquiry authorised u/s 17 should include within its compass the examination of the merits of the employees" claim against his employer and a decision on it, the legislature would have undoubtedly made an appropriate provision conferring on the State Government on the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry. It was held that the employees" claim against his employer

which can be formed a subject matter of .an enquiry u/s 17 must relate to compensation awardable u/s 4, gratuity awardable u/s 5 or wages claimable under the decision of the Wage Board and if the employee wishes to make any other claim against his employer that would not be covered by Section 17. The Supreme Court said that as the marginal note shows the section deals with the recovery of amount due from an employer. The nominated authority, it was held, had no jurisdiction to entertain the application of the first respondent.

(24) Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , is again a .case in which the scope of Section 33-C(2) of the Act came upon for consideration. The challenge in the said case was to the order of reference made to the Labour Court on these issues:- "1. Whether the undertaking or the business of M/s. River Steam Navigation Company Limited: has been transferred to Messrs Central Inland Water Transport Corporation Limited. If so. whether the settlement dated the 25th August, 1965 is binding on Messrs Central inland Water Transport Corporation Limited ? 2. Whether the workmen mentioned in list No. 1, bound by the Settlement, dated the 25th August, 1965 are, entitled to continue in employment under Messrs Central Inland Water Transport Corporation Limited ? If so. what amount of money are they entitled to ? Is that money recoverable from Messrs Central Inland Water Transport Corporation Limited? 3. Whether the workmen mentioned in List No. Ii are entitled to get retrenchment compensation u/s 25F, read with section. 25FF of the Industrial Disputes Act, 1947?. If so, what amount of money are they entitled to? 4 Whether the undertaking or the business of Messrs Rivers Steam Navrgadon Company Limited has been closed which the meaning and contemplation of Section 25FFF of the industrial Disputes Act, 1947 ? It so, what amount to money as compensation are, it so, workmen mentioned in Lists NOS. I and Ii entitled to?"

(25) 7 he Supreme Court held that since proceeding u/s 33-C(2) is in the nature oi an execution proceedings it should follow mat investigation of the nature of the determination 1 & 2 above is clearly outside its scope. The Supreme Court said that it is true that m a proceeding u/s 33-C(2), as in an execution proceeding, it may be necessary to determine the identity oi the person by whom or against whom the claim is made if there is a challenge on that score. But is merely "Incidental". The Supreme Court held that to call determinations & 2 "Incidental, to an execution proceedings would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon determinations 1 & 2 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 1 & 2 referred to above, or proceed to compute the benefit by dubbing the former as Incidental" to its main business of computation. In. such cases determination 1 & 2 are not Incidental" to the computation. The

computation itself is consequential upon and subsidiary to determination 1 & 2 as the last stage in the process which commenced with a reference to Industrial Tribunal. Reference was also made to decision in the case of State Bank of Bikaner and Jaipur Vs. R. L. Khandelwal (1968) 1 Lab. L.J. 589 holding 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 the reference u/s 10 of the Act. This case has again been cited with approval by Supreme Court in Municipal Corporation of Delhi Vs. Ganesh Razak and another 1995 Lic 330, and it has been reiterated that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed there being no earlier adjudication or recognition thereof by the employer. the dispute relating to entitlement is not incidental to the benefit claimed and is, Therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefits 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 purposes or implementation or enforcement thereof some ambiguity requires interpretation, then interpretation is treated as "Incidental" to the Labour Courts power u/s 33-C(2) and that of executing court's power to interpret the decree for purposes of execution. It was also reiterated that Section 33-C(2) is wider than Section 33-C(1).

(26) In P.K. Singh and Others Vs. Presiding Officer and Others, again it was held that a workmen could not put forward the claim in an application filed u/s 33-C(2) of the Act in respect of a relief which was not based on an existing right and which could be appropriately the subject matter to an industrial dispute requiring a reference u/s 10 of the Act.

(27) A Division Bench of this court in Indian Refrigeration Industries Vs. Lt. Governor and Others, held that application u/s 33-C(1) was misconceived as there was a dispute between the parties as to whether the workmen are entitled to any wages after the date of tile award and the workmen ought to have filed application u/s 33-C(2) before the Labour Court.

(28) Reference may also be made to a Full Bench decision of this court in Indian Tourism Development Corporation Vs. Delhi Administration and Others, . In this case the dispute referred to Industrial Tribunal for adjudication was :- "Whether the workmen as shown in Annexure "A" arc entitled to wages for the period of lockout with effect from 1st January 1981 and, if so, what directions are necessary in this respect ?"

(29) The grievance of the Management to the aforesaid terms of reference was that since the real industrial dispute about the existence or otherwise of lockout had not been. referred to the Industrial Tribunal, it would not be open to the management to urge before the Industrial Tribunal whether there was at all a lockout or whether there was violence by workmen and for that reason there was

suspension of the working of the restaurant with effect from January 2, 1981 and whether the closure of the restaurant from February 18, 1981 was proper and for that reason the termination of the services of the workmen was justified and legal. It was held that whether in fact there was a closure or lockout is the real dispute which can more appropriately be determined in industrial adjudication. The terms of reference had presumed that there was lockout and the jurisdiction of the Labour Court Industrial Tribunal was limited to the points specifically referred for adjudication and matters incidental. Therefore and it was not permissible for the Industrial Tribunal to go beyond the terms of reference. The Bench held that the appropriate government could not reach a final decision on the question whether it was lockout or closure because that would normally lie within the jurisdiction of the industrial Tribunal.

(30) In *Kays Construction Co., Pvt, Ltd., Vs. State of U.P, & Ors.* 1965 (2) Scr 279 relied upon by learned counsel for the workmen, the scope of Section 6-H of the U.P. Industrial Disputes Act, 1927 came up for consideration. Sub-section (1) and (2) of Section 6-H of the said Act are analogous to Section 33-C(1) and (2) of the Act. Briefly the facts were that the appellant company took over the business and with it some of the workmen of Kays Construction Co. but all the workmen were not taken over by the successor company who was appellant before the Supreme Court. The workmen whose services were not taken over raised an industrial dispute which resulted in an award dated 31st January, 1958 being made. One of the questions before the Industrial Tribunal was the reinstatement and back wages of the workmen who were not re-employed by the appellant company. In the award it was held that the management of the successor company was required to reinstate the old workmen of the former company and the said workmen will be restored in their old and equivalent jobs and given continuity of service and 50 per cent back wages for the period they were forcibly kept out of employment. After the award, a large number of workmen preferred claims for their back wages under first sub-section of Section 6-H of the aforesaid Act. The Labour Commissioner purporting to act under first sub-section of Section 6-H issued the requisite recovery certificate. On a writ petition being filed by the management in the High Court of Allahabad a learned Single Judge set aside the recovery certificate holding that since the exact amount was required to be determined, proceedings had to be taken before the Labour Court under second sub-section to determine the money equivalent of "benefit", to which the workmen were entitled before the certificate can be issued. The learned Single Judge was of the opinion, that the application under first sub-section of Section 6-H was premature and thus erroneous. The decision of learned single Judge was, however, reversed by the Division Bench on a Letters Patent Appeal having been filed by the workmen. The Division bench was of the opinion that the computation in terms of money of a "benefit" was something different from mere arithmetical calculation of the amount of back wages. The Supreme Court considered the scope of Section 6-H (1) and (2) which are analogous to Section 33-C(1) and (2) of the Act and Section 20 to the

Industrial Dispute (Appellate Tribunal) Act, 1950. In these three Statutes the first sub-section deals with the mode of recovery of "money due" to a workman under an award etc. and second sub-section deals with "benefit" computable in terms of money. The Supreme Court held that the contrast between "money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the areas of operation of two sub-sections. The Supreme Court said that if the word "benefit" were taken to cover a case of mere calculation of wages, the first sub-section would hardly have any play. The Supreme Court held that in the case before it where the money due is back wages for the period of unemployment it is covered by the first sub-section and not the second. The Supreme Court upholding the decision of the Division Bench, held that it was a verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit. This decision does not, to our mind, advance the case of the workmen any further insofar as the controversy with which we are concerned in the present case. In the case before Supreme Court there was an award in favor of the workmen and, Therefore, the application under sub-section (1) was held to be maintainable although some calculation had to be done to determine the amount of the back wages but no determination of the rights of the parties was in issue.

(31) Learned counsel for the workmen also strongly relied upon the decision of Supreme Court in the cases of *The Sawatram Ramprasad Mills Co. Ltd. Vs. Baliram Ukandaji and Another*, . (10) This was a case of lay off for which workmen claimed compensation and for that purpose made an application before the Labour Court. The Labour Court did not accept the objection of the management that the application filed by the workmen was incompetent. The management also failed in its challenge before the High Court. Before the Supreme Court the management reiterated its stand that the calculation of the amount could not be made u/s 33-C(1) of the Act and, Therefore, the application of the workmen was not competent. The Supreme Court noticed that the contention 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 had been earlier rejected by the Court in the case of *Kays Construction Co. (Supra)* and held that 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 pre-determined sum. It was held that the dates of lay-off are known and each workmen had to show to the Labour Court that he is qualified to receive compensation for lay-off which would be shown from the muster roll which the employer is required to maintain and it will then be a simple arithmetical calculation which is permissible u/s 33-(C)(1). The Supreme Court has also observed it there is any question whether there was lay-off or not the Labour Court will decide it. This decision shows that the question of only arithmetical calculation is permissible u/s 33-(C) (1) but when there is dispute as to whether there was lay-off or not, it was for the Labour Court to decide that dispute. This decision again, in our view. does

not advance the argument put forth on behalf the workmen that all disputes about the retrenchment can be adjudicated upon by the appropriate Government u/s 33-C(1).

(32) Reference may also be made to the decision in the M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, . (11) where the challenge was to the order of the State Government which had refused to refer the dispute raised by the appellant for adjudication by the Industrial Tribunal u/s 10 of the Act on the ground that the granting of Dearness Allowance equal to that of the employees of the Central Government would cause additional financial burden on the Government, The Supreme Court held that this virtually amounts to a final adjudication of the demand itself and the Government had made a unilateral decision without necessary evidence and without giving an opportunity to rebut the conclusion of the Government and this has resulted in depriving the employees of an opportunity to piece evidence before the Tribunal to substantiate reasonableness of the demand. The Court held that while conceding a very limited jurisdiction to a State Government to examine patent frivolousness of the demand, it is to be understood as a rule that adjudication of demands made by workmen-should be left to the Tribunal to decide. The Court opined that what the State Government had done was not a prima facie examination of the question involved but decision of the demand on merits thereby usurping the power of a quasi-judicial Tribunal by an administrative authority, namely, the appropriate Government. Regarding the limited power of the appropriate Government to examine the matters the Supreme Court held :

"THERE may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render S.10 and S. 12(5) of the Industrial Disputes Act nugatory."

(33) The Supreme Court said that the demands raised in the said case had necessarily to be decided by the appropriate Tribunal on merits.

(34) The aforesaid decision was cited with approval in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, .(12) where Supreme Court held that while exercising power u/s 10(1) the function of the appropriate government is an administrative function and not a judicial or Quasi-judicial function and that in performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the list which would certainly be in excess of the power conferred on it by section 10. It was held that the dispute whether the persons raising the dispute are workman or not cannot be decided by the government in exercise of its administrative function u/s 10(1) of the Act and. Therefore, the order of the

government refusing to refer the dispute on that ground is liable to be set aside. Though these decisions were rendered in cases where the appropriate government had declined to make the reference after examination of the demands disputes on merits, by the appropriate government and are not the decisions where Section 33-C came up for consideration but the principle underlying these decisions of the Supreme Court that the Government has no power to decide the dispute would squarely apply to determine the extent of the power of the appropriate government u/s 33-C(1) of the Act because under this provision like Section 10 of the Act. no power has been vested in the appropriate government to adjudicate the disputes between workman and the management. Section 33-C(1) only provides an additional mode of speedy recovery of the money due to a workman under a settlement or an award or under the provision of Chapter V-A of V-B of the Act.

(35) In Uttar Pradesh Electric Supply Company Ltd., Vs. Shukla (R.K.) and another 1969(2)(13) L.L.J. 728, briefly the facts were that a company was granted license to generate and distribute electricity for two areas. The undertakings of the company in both the areas were taken, over by U.P. Electricity Board under the provisions of Indian Electricity Act, 1910. The employees of the company in both the undertakings were also taken over in the service by the Board without any interruption. The employees filed applications before the Labour Court u/s 6H(2) of the U.P. Industrial Dispute Act for computation of the benefit of retrenchment compensation and notice pay u/s 6(O) of the Act. The company, inter-alia, contended that the employees voluntarily abandoned their services and took employment with the Board in the same post and on the same terms and conditions on which they were employed by the company and that there was no retrenchment and the Labour court had no jurisdiction to entertain their applications. Negating the said contention and without finding that all the three conditions in the proviso to Section 6(O) of the Act existed, the Labour court allowed the application. The Supreme Court allowed the special appeal filed by the company and held that prima facie the disputes relating to retrenchment of workmen and closure of establishment fell within the exclusive competence of the Industrial Tribunal by virtue of Section. 4B read with item No. 10 of Schedule Ii to the U.P. Industrial Disputes Act and not within the competence of the Labour Court constituted u/s 4A of the Act. It held that dispute clearly raised the question whether there was retrenchment of workmen which could give rise to liability to pay compensation. Such dispute was exclusively within the competence of the Industrial Tribunal and not within the competence of the Labour court. The Supreme Court after noticing the legislative intention disclosed by Section 33-C(1) and 33-C(2) held that where the right to retrenchment compensation which is the foundation of the claim is itself the matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on reference, it would be straining the language of 33-C(2) to hold that the question whether there has been retrenchment may be decided by the Labour court. Where, however, the dispute is whether workmen have been

retrenched and computation of the amount is subsidiary or incidental, the Labour court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested.

(36) There is no doubt that the object underlying the enactment of Section 25N in the Act is to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing employment and to check the growth of unemployment which would otherwise be the consequence of retrenchment in industrial establishments employing large number of workman. It is also intended to maintain higher tempo of production and productivity by preserving the industrial peace and harmony (See: Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, .(14) There is also no doubt that the object underlying Section 33-C(1) is to provide a speedy mode of recovery to the workmen where the amount is due to them from the employers under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B. The question, however, in the present petitions is regarding the scope of power of the government to adjudicate when there is a bonafide dispute with regard to the basic fact of retrenchment itself. The language of Section 33-C(1) shows without any manner of doubt that this provision contemplates the prior determination of the rights of the workmen. The decision in the case of Payment of Wages Inspector Vs. Surajmal Mehta and Another, relied upon by learned counsel for the respondents does not help the respondents. This decision in fact supports the contention urged on behalf of the management that Section 33-C(1) can be invoked where any money is due to a workman from an employer under a settlement, award or under the provisions of Chapter V-A/V-B.

(37) The decision of the Supreme Court in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, though concerns the power of the government to prima facie consider the merits of dispute while taking a decision as to whether any industrial dispute should be referred for adjudication or not under Sections 10 and 12(5) of the Act. also suggests conferment of limited power on the appropriate government. The Supreme Court while holding that when the appropriate government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not, also held that if dispute in question raises question of law. the appropriate government should not purport to reach a final decision on the said questions of law because that would normally lie within the jurisdiction of the Industrial Tribunal. It also held that. similarly, on disputed questions of fact, the appropriate government cannot purport to reach final conclusions, for that again would be the province of Industrial Tribunal. The decision of the Supreme Court in Gulshan and Others Vs. State of Punjab, where the main question was regarding the interpretation of Section 2(00) does not help us in the present case for deciding the question regarding the scope of power of govt. u/s 33-C(1). Likewise the decision of Calcutta High Court in Naresh Chander Dass Vs. 7th

Industrial Tribunal & Ors., 1982 Labour and Industrial Cases 579(8) holding that the termination of the services of the workman in accordance with the standing orders for continued absence without leave of the company amounted to retrenchment within the meaning of Section 2(oo) and the same was illegal for noncompliance with the provisions of Section 25F of the Act, does not render any assistance in the present case since it is not the case of the management that the services of the workmen were terminated. The case of the management is that it was always ready and willing to provide work to the workmen but workmen were deliberately not joining the work and were on illegal strike.

(38) From the aforesaid discussion, we conclude that the proceedings u/s 33-C(1) are in the nature of execution proceedings providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award of the provisions of Chapter V-A or Chapter V-B. Section 33-C(1) does not vest any power of adjudication on the appropriate government except to the limited extent of examining the facts- to find out whether objections to jurisdiction of the appropriate government has been taken by the employer simply with a view to oust the jurisdiction of the appropriate government under the said Section and deprive the workman of money due to him. On the interpretation of Section 33-C(1) of the Act and scope of power of the appropriate government under this Section, we summarise our conclusions as follows:- (i) Proceedings u/s 33-C(1) of the Act are in the nature of execution proceedings. (ii) The appropriate government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry. (iii) In case the management raises bona fide dispute/s on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate government has no right of adjudication of such dispute/s. (iv) In case of bona fide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/ Industrial Tribunal. (v) The appropriate government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or malafide taken with a view to deprive the workman of the money due to him. (vi) The appropriate government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision u/s 33-C(1) and is also required to make a speaking order giving reasons to that the aggrieved party- management or workman may seek judicial review of the decision of the appropriate government in accordance with law.

(39) In all the petitions before us the management had disputed before the appropriate government the right of the workmen claiming money due u/s 33-C(1). The appropriate government has issued impugned recovery certificates without coming to the conclusion that the objections of the management are perverse, frivolous or malafide and informing management reasons therefore.

Thus. there was no application of mind on the part of the government on this aspect. Briefly the stand of the management has been noticed hereinabove while narrating facts. In these proceedings we refrain from expressing any opinion on the merits of the objections raised by the management lest it may prejudice their case or that of workmen.

(40) In the light of the above discussion, the impugned recovery certificates are quashed. The appropriate government is directed to decide the matters afresh within a period of 3 months in the light of the law laid down in this decision.

(41) In some petitions as a result of interim orders certain payments were made by the management to the workmen. The workmen would not be required to refund to the management payments which they may have received as a result of interim orders till fresh decision by the appropriate government/Lab our Court/ Industrial Tribunal.

(42) The writ petitions are disposed of in the above terms leaving, however, the parties to bear their own costs.