

(2001) 07 CAL CK 0071
In the Calcutta High Court
Case No : Writ Petition No. 680 of 1999

Workmen represented by West Bengal Medical and Sales Representatives' Union APPELLANT

Vs

Indian Drugs and Pharmaceuticals Ltd. and Others RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

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

Citation : (2002) 92 FLR 78 : (2002) 4 LLJ 859

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Judgement

D.K. Seth, J.—On July 15, 1998, an award was passed by the learned Tribunal in Reference Case No. VIII-107 of 1991. By means of this writ petition the petitioners have claimed that the respondent-authority should comply with the said award. It is also contended that the said award has not been challenged and has become final.

2. Mr. Dasan, learned counsel for the petitioners, contended that this is a case where Section 33-C(2) is not necessary to be invoked since the Tribunal has already ascertained the amount payable.

3. In the said award, the Tribunal had observed as follows:

"In view of the above findings and on the basis of the evidence on record it is held that the management of IDPL has failed to prove that there was sufficient reason for declaring lock-out of their regional sales office at Calcutta from August 20, 1989 to November 19, 1989. On the other hand, the union has proved through the W.W.-I that the lock-out was declared only and there was no incident in between August 1, 1989, to August 20, 1989. Therefore, it is held that the lock-out of the Divisional/Regional Sales Office at Calcutta of IDPL from August 20, 1989, to November 19, 1989, was illegal and unjustified. It is further held that all the workmen will be entitled to have full wages/salaries and other

benefits from the IDPL authorities for the total lock-out period from August 20, 1989 to November 19, 1989, even the employees who were engaged on "no work no pay" basis or daily wage basis, they will be treated as on duty on those days and they will also get their wages/salaries for the entire period from August 20, 1989 to November 19, 1989, and it will be presumed that all the employees have continued their services without having any leave from August 20, 1989 to November 19, 1989. In such ways the award is being passed."

4. It appears from the said award that the period of lock-out was declared illegal and it was held that the employees/workmen were entitled to full wages/salaries and other benefits for the said period from August 20, 1989, to November 19, 1989. It was also held that the employees who were engaged on "no work no pay" basis shall also be treated as on duty on those days and also get their salaries/wages for the said period.

5. Mr. Dasan has also pointed out from a notice that the company has since been referred to the BIFR and notification has been issued on February 21, 2001, to the effect that all persons interested in any claim should take appropriate action for the recovery of their dues. In the circumstances, Mr. Dasan contends that the proceeding u/s 33-C(2) would be an infructuous remedy. Therefore, this writ Court should exercise its jurisdiction by directing the respondents to pay the amount payable under the award by the petitioners within a particular period of time.

6. Learned counsel for the respondent-company, on the other hand, contends that such a direction cannot be issued in exercise of the writ jurisdiction in view of the fact that this Court is not an executing authority of the award of the Labour Court or the Tribunal. The petitioners have an alternative remedy u/s 33-C(2) of the Industrial Disputes Act. That apart, the question is a computation of the amount payable. This Court in exercise of the writ jurisdiction cannot perform such exercise which is, in fact, determination of disputed question of fact. Therefore, this writ petition should be dismissed.

7. I have heard learned counsel of the respective parties at length. It appears that there is an alternative remedy u/s 33-C(2) of the said Act, but it is to be found out whether such remedy is adequate having regard to the facts and circumstances of this case. In the present case, this company has since been referred to the BIFR and that a notice has been issued on February 21, 2001, inviting all persons or secured creditors to initiate proceedings for the recovery of their dues and that the proceeding is in contemplation of the winding up of the company. Thus, if the petitioners are driven to take resort to section 33-C(2) of the said Act as an alternative remedy which is also absolutely a time consuming affair, having regard to the facts and circumstances of the case, it cannot be said to be an adequate remedy. Therefore, this petition cannot be thrown out on that ground.

8. So far as the question of computation is concerned, admittedly, this Court

cannot undertake the exercise of computation of the amount payable.

9. Mr. Dasan has also relied on a decision in the case of M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam, . In the said decision, it was held that in certain cases the High Court can implement the award of the Labour Court, if the employer refuses to implement the award. This proposition cannot be disputed, but the question remains as to the kind of alternative remedy or the exercise as necessary to be undertaken by the Court. If such exercise is beyond the scope and ambit of the jurisdiction of the writ Court, in that event the same cannot be undertaken. It can be undertaken only when such exercise is necessary and within the scope and ambit of the jurisdiction of the writ Court.

10. In the facts and circumstances of this case, this petition is disposed of by directing the company to pay the amount to the petitioners in terms of the award according to their own computation as early as possible, preferably within a period of three months from the date of communication of this order.

11. However, it is not necessary for this Court to enter into the exercise of the computation having regard to the award that has been passed which clearly indicates the period for which the payment is to be made and also the heads of items which are to be paid. The same may be paid according to the calculation of the company itself. In that event, there may not be any dispute with regard to the computation. However, it is expected that such computation shall be made on the basis of the available records of the company itself,

12. The petition is disposed of accordingly. There will be no order as to costs.

13. All parties concerned are to act on a xeroxed signed copy of this dictated order on the usual undertaking.