

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 1st April, 2011

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CONT.CAS(C)173/2011

VIMAL KUMAR

..... Petitioner/Relator

Through: Mr. R.K. Saini with Mr. Sitab Ali
Choudhary and Ms. Aradhna Mittal,
Advocates

Versus

RAMESH NEGI & ANR.

..... Respondents/Alleged Contemnor

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. Contempt is averred of the order dated 11th November, 2009 of this Court on an application of the petitioner / relator under Section 17B of the Industrial Disputes Act, 1947 directing the alleged contemnor to pay to the petitioner / relator from the date of the award and till the decision of

the writ petition, last drawn wages or minimum wages whichever is higher and on the other terms and conditions stipulated in the order. It is the case of the petitioner that the alleged contemnors are in violation of the said order.

2. The petition came up first before this Court on 10th March, 2011 when attention of the counsel for the petitioner/relator was invited to an order dated 17th January, 2011 of this Bench in Cont.Cas(C) 26/2011 titled ***Nishikesh Tyagi v. Sh. P.R. Santhanam*** holding a contempt petition to be not maintainable with respect to an order under Section 17B of the ID Act. Reliance in the said order was placed on another judgment of this Court in ***Uma Shankar v. M/s Hindustan Carbide Pvt. Ltd.*** 111(2004) DLT 270 where also a contempt petition filed for the alleged violation of order under Section 17B was dismissed. The counsel for the petitioner had then sought time to consider the matter.

3. The counsel for the petitioner has today urged that the judgment of this Court in ***Uma Shankar*** (supra) cannot be read as laying down that a contempt petition would not be maintainable for violation of an order under Section 17B of the Act. He has argued that in ***Uma Shankar*** the

employer was in violation not only of the order under Section 17B of the ID Act but also of the terms and conditions on which the stay of the award of the Labour Court/Industrial Tribunal challenged in that case was granted; that owing to the said violation, the writ petition stood dismissed; that it was thereafter that the contempt petition for non compliance of the order under Section 17B was filed. It is argued that it was in these circumstances, since the writ petition already stood dismissed and further since owing to the violation/breach of the order under Section 17B the petitioner employer in that case had already been punished by the dismissal of its writ petition, that this Court held that the contempt petition would not be maintainable and that the remedy of the workman is under Section 33C of the ID Act. It is urged that in the present case the writ petition in which the order under Section 17B of the ID Act was made is still pending and thus what has been laid down in *Uma Shankar*, would not apply.

4. Before proceeding to consider the aforesaid argument, I may notice that I have had an occasion in *Government of NCT of Delhi Vs Shri D.S. Bawa* MANU/DE/1423/2010 to consider whether non-compliance of order under Section 17B necessarily results in dismissal of the writ

petition challenging the award of the Labour Court/Industrial Tribunal. Relying on *Hindustan Zinc Ltd. v. Industrial Tribunal* (2001) 10 SCC 211 it was held that a writ petition cannot be disposed of for the reason of non compliance with the order under Section 17B, without dealing with the merits.

5. I am unable to agree with the counsel for the petitioner that the judgment in *Uma Shankar* is not a precedent for the proposition that non compliance of order under Section 17B is not contumacious. Undoubtedly, in *Uma Shankar* the writ petition in which the order under Section 17B was made stood dismissed by the time the contempt petition was filed. However, the contempt petition was held to be not maintainable not for the reason of the writ petition having stood dismissed. This Court referred to *T. Sudhakar Prasad v. Govt. of A.P.* JT 2001 (1) SC 204 and to *R.N. Dey v. Bhagyabati Pramanik* 2000 (4) SCC 400 deprecating the use of Contempt of Court jurisdiction as a method of executing a decree or implementing an order for which the law provides appropriate remedy. This Court also relied upon *Kishorbhai Dahyabhai Solanki v. Nagjibhai Muljibhai Patel* (2002) II LLJ 1034 Gujarat (DB) and on *Abdul Razack Sahib v. Mrs. Azizunnissa Begum* AIR 1970

Madras 14 to hold that penal sanctions under the contempt procedure should not be invoked for default of compliance with such orders and that the high function of a Court of Justice proceedings by way of Contempt of Court should not be employed as a legal thumbscrew by a party against his opponent for enforcement of his claim. It is on the basis of the said principles that this Court held that the contempt petition did not lie. ***Uma Shankar*** is thus a precedent on all fours against the maintainability of this petition.

6. I have in ***Nishikesh Tyagi*** (supra) given yet another reason for holding contempt to be not maintainable. Reliance was placed on ***Dr. Bimal Chander Sen v. Kamla Mathur*** 1983 Cri LJ 495, ***Shri Puneet Parkash v. Shri Jai Parkash*** MANU/DE/0773/2010 and on ***Anand Kumar Deepak Kumar v. Haldiram Bhujiawala*** 146 (2008) DLT 100 to hold that once a mechanism for enforcement of the order is provided, contempt would not lie.

7. The counsel for the petitioner/relator has not been able to controvert that an order under Section 17B would be enforceable under Section 33C(1) before the Labour Court. Thus if the employer does not comply

with 17B order, the employee/workman can always approach the Labour Court/Industrial Tribunal for enforcement thereof.

8. Even though Section 33C(1), as per its language is applicable where any money is due to the workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB of the ID Act and even though Section 17B does not fall in either of the said Chapters, but the Supreme Court in *Central Bank of India Limited v. P.S. Rajagopalan* AIR 1964 SC 743 held that Section 33C(1) provides for a kind of execution proceedings and it contemplates that if money is due to a workman, the workman is not compelled to take recourse to the ordinary course of execution in the Civil Court but may adopt a summary procedure prescribed by Section 33C(1) and that all that Section 33C(1) postulates is that a specific amount is due to the workman and the same has not been paid to him and if the appropriate Government is satisfied that the money is so due, then it is required to issue a certificate for the said amount to the Collector and that leads to the recovery of the said amount in the same manner as an arrear of land revenue.

It was further held that if though Section 33C(1) contains words of limitation and Section 33C(2) is free of such limitations but Section 33C(4) further provides that the amounts found due under Section 33C(2) may be recovered in the manner provided for in Section 33C(1). It would thus be seen that Section 33C(4) widens the scope of Section 33C(1).

In my opinion, the amounts payable under Section 17B would also fall in amounts due to an employer “under an award” inasmuch as the same represent the amount payable statutorily during the time the challenge to the award is pending before the High Court.

9. Mention must also be made of the recent dicta in ***Kaivalyadham Employees Association Vs. Kaivalyadham S.M.Y.M. Samity*** MANU/SC/1656/2009 where the Supreme Court though held that the High Court could not direct an application under Section 17B to be adjudicated by directing parties to lead evidence before the Labour Court under Section 33C(2), nevertheless held that in certain cases the provisions of Section 33C(2) may have to be resorted to in respect of an order under Section 17B but not as a matter of course.

10. I may also notice that this Court has held the remedy of contempt to be not available for breach of interim orders directing payment, in proceedings other than under the ID Act. Reference in this context may be made to *Ajit Arjani v. Roma Arjani* 111(2004) DLT 545 laying down that contempt petition does not lie for violation of an order directing payment of interim maintenance and the remedy for such violation is by execution of the said order. Similarly in *Puneet Prakash v. Jai Prakash* MANU/DE/0773/2010 contempt was held to not lie for non compliance of a consent decree. It was held that the remedy was by way of execution. The common thread running through the said judgments is that contempt proceeding is not a substitute for execution. Though the Supreme Court in *Rama Narang v. Ramesh Narang* (2006) 11 SCC 114 observed that merely because an order or decree is executable, would not take away the Court's jurisdiction to deal with a matter under the Contempt of Courts Act, 1971 but provided the Court is satisfied that the violation of order or decree is such, that if proved, it would warrant punishment under Section 13 of Contempt of Courts Act on the ground that the contempt substantially interferes with the due course of justice; non compliance of Section 17B

order cannot be said to be interfering with the due course of justice also for the reason hereinafter stated.

11. The occasion for passing an order under Section 17B arises only if the employer prefers a proceeding against the award of the Labour Court/Industrial Tribunal of reinstatement of the workman and if the workman has not been employed in any establishment during the pendency of such proceeding. The question of the workman being not employed in any establishment during the pendency of such proceeding would arise only if the High Court or the Supreme Court while entertaining challenge to the award, stays the operation thereof. If it is found that the employer has on the one hand obtained an order of stay of the operation of the award of reinstatement and is on the other hand not complying with the order under Section 17B, the appropriate remedy would be to seek vacation of the said order of stay and whereupon the employee would become entitled to execute the award of reinstatement before the Labour Court. No case of contempt would still be made out.

12. Some of the other counsels for employee / workman in other similar matters have argued that unless the jurisdiction of contempt is exercised in

such a situation, the workman would be compelled to file applications under Section 33C month after month. It is also contended that the procedure before the Labour Court / Industrial Tribunal is elaborate.

13. The Labour Courts/ Industrial Tribunals were constituted to provide a speedy remedy to the workmen who are found to be constituting a class amongst themselves entitled to speedy adjudication of their claims. Though finding merit in the contentions that the lofty aspiration with which the Labour Courts/Industrial Tribunals were constituted has not been fulfilled and it is often found that the disposal of the disputes by the Labour Court/Industrial Tribunal is taking longer than adjudication by the Civil Courts, however, the same cannot digress the view of this Court on the logic aforesaid. It is for the Industrial Tribunal/Labour Court to devise ways and methods for enforcement of orders under Section 17B. If the Labour Court/Industrial Tribunal finds that the employer is harassing the workman in payment under Section 17B, the Labour Court/Industrial Tribunal can always devise ways and means for ensuring such payment regularly and month by month. Moreover if it is shown to this Court also that the employer has by his/its conduct created a situation whereby neither the award of reinstatement is being enforced/implemented nor is

the order under Section 17B abided by, this Court can always invoke its jurisdiction under the Contempt of Courts Act, 1971 to punish the guilty.

14. Thus looked at from any perspective, the petition cannot be held to be maintainable and is dismissed with liberty to the petitioner / relator to avail of the alternative/appropriate remedy. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**APRIL 1, 2011
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