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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.11.2016

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W.P.(C) 6008/2014

ATUL KANTI TRIPATHI

..... Petitioner

Through: Mr. Pankaj Vivek and Mr. Atul Tripathi,
Advocates.

Versus

M/S KUBER MEDIA LTD.

..... Respondent

Through: Mr. Asim Naeem, Asad Siddiqui,
and Mohd. Haris, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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25.11.2016

1. The petitioner (workman) impugns the order dated 07.06.2014 passed in Ex. Petition No. 50/2013 and a subsequent order filed on an application for implementation of the Award passed in LIR No. 346/2008 dated 10.03.2010. The Award dated 10.03.2010 directed the respondent (management) to (i) grant reinstatement to the workman in service along with back wages; (ii) continuity of service and consequential benefits within 30 days from the date of publication of the Award, (iii) failing which, the management will have to pay interest at the rate of 12% per annum till the date of actual payment. The Award was published on 17.08.2010. It became enforceable from 16.09.2010. An Execution petition was moved by the petitioner under Section 33C of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act') on 07.11.2013. The workman's application for condonation of delay was opposed by the management on the

ground that it was barred by limitation and that the application for implementation of the Award could have been moved only within the period of one year after it was published and not after three years. It is not in dispute that the application was filed after three years. The Labour Court held inter alia as follows;

“7. It is clear from the facts enumerated above that the present execution has been preferred by the workman against the award dated 10.03.2010 which is clear and unambiguous as the last drawn wages have been given, date of termination of service of the workman has been given and the rate of interest has also been provided and therefore, there should have been no difficulty in computing the liquidated amount which has even been calculated by the workman and has been mentioned in the petition to be Rs.70,48,146/-. If that is so, there is no question of any disputed amount which requires to be calculated or adjudicated upon by the court and in such circumstances, the present petition has to be treated to be under Section 33C(1) of the ID Act.

8. Even in the case law relied upon by the AR for workman in East India Coal Co. Ltd. Vs Rameshwar (1968) 1 LLJ 6 (SC) it was held that “Section 33C(1) of the ID Act applies to cases where money is due to a workman under an award or settlement or under chapter 5A of the Act, already calculated and ascertained and therefore, there is no dispute about its computation. But sub-section (2) applies both to non-monetary, as well as to monetary benefits. In the case of monetary benefits it applies where such a benefit, though due, is not calculated and there is a dispute about its calculation”.

9. Furthermore, in Punjab National Bank Ltd. Vs. Kharbanda KL 1962 (1) LLJ 234 SC it was held that “it is clear therefore that Section 33C is a provision in the nature of execution and where the amount to be executed is worked out or where it may be worked out without any dispute, Section 33C(1) will apply. But where the amount due to a workman is not stated in the award itself and there is a dispute as to its calculation,

sub-section (2) will apply and the workman would be entitled to apply thereunder to have the amount computed provided he is entitled to a benefit, whether monetary or non-monetary, which is capable of being computed in terms of money.”

10. It is clear from the aforesaid that in any circumstances, the present petition has to be treated u/s 33C(1) of the Act.

11. It has been provided under Section 33C(1) of the Act that the “workman himself or any other person authorized by him in writing in this behalf, or, in case of the death of the workman, his assignee or heirs may, without prejudice to any other mode or recovery, make an application to the appropriate government for the recovery of money due to him...;

Provided that every such application shall be made within one year from the date on which the money become due to the workman from the employer;

Provided further that such an application may be entertained after the expiry of the said period of one year, if the appropriate government is satisfied that the applicant had sufficient cause for not making the application within the said period.”

12. It is clear from a plain reading of the sub-section that an application u/s 33C(1) of the Act has invariably to be moved by the workman before the appropriate government within one year from the date of the publication of award or at the most, publication of the Award and the delay if any, in moving the said application can only be condoned by the appropriate government. Admittedly, the present application was never filed before the appropriate government nor the application for condonation of delay was moved before the appropriate government. It is also an admitted fact on record that this application has been filed beyond a period of one year and is thus, beyond limitation.

13. As mentioned above, Section 33C(1) of the Act says that a workman can also file the application before the appropriate

government but without prejudice to any other mode or recovery. It may thus, include filing of an execution before this court. But again, Section 19 of the ID Act puts a rider. Sub-section 3 of Section 19 states that an award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A of the Act. The first proviso to this sub-section provides that “the appropriate government may reduce the said period and fix such period as it thinks fit”. The second proviso states that “the appropriate government may before the expiry of the said period extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation”.

14. A cumulative reading of the above provisions shows that an award can be implemented by the appropriate government within one year from the date when it becomes enforceable under section 17A which period can be extended by appropriate government from only one year to the maximum of three years. Hence, this court has no power to extend the period of limitation for the execution of the award. As pointed out above, the award was passed on 10.03.2010, was published on 17.08.2010 and became enforceable on 16.09.2010. The present application/execution has been filed on 07.11.2013 that is to say, beyond the prescribed period of three years as per second proviso to Section 19(3) of the ID Act, during which only the appropriate government could have extended the limitation for implementation of the award.

15. Ld. AR for management relied upon judgment in *Jagatjit Industries Ltd. v. Labour Officer & Anr.* (2012) III LLJ 448 Delhi wherein it was held that “**no prosecution u/s 29 of the Act could be initiated against the management if the injury is not continuing each day after one year of the publication of the award, if it is not implemented**”. Another judgment was relied upon delivered in *Ajaib Singh vs. Sirhind Cooperative Marketing cum Processing Service Society Ltd.* 1999 (1) LLJ 1260 SC wherein it was held that “**the delay was not agitated by the**

management at the first inception, the relief could be moulded in favour of the workman". However, in the instant case, the delay factor had already been agitated by the management at the first instance.

16. It is clear from the above discussion that the present execution has been filed beyond a period of limitation and therefore, is not maintainable. The preliminary issue is accordingly decided in favour of the management and against the workman. Resultantly, the execution stands dismissed."

2. The learned counsel for the petitioner submits that the application before the Labour Court was only for a computation of the amounts which ought to have been paid to the petitioner in terms of the Award. It is only after such computation was adjudicated by the Labour Court that the application in execution proceedings for enforcement could be moved before the appropriate authority. He submits that in the first instance, the said amount ought to have been calculated and only thereafter recovery proceedings would have been pursued. This Court would note that the petitioner's application under Section 33C of the Industrial Disputes Act sought the following relief:

"It is therefore, most respectfully prayer that the amount of Rs.70,48,146/- may be recovered from the employer alongwith the pendentelite interest and future interest till recovery of the amount."

3. The aforesaid amount was sought by the petitioner on the basis of a calculation as under;

6. That the Petitioner/workman had lastly drawn a salary of Rs.7,000/- pm. As per law applicable to the working journalists in increment of 10% over and above the last drawn salary is payable.

7. That the amount payable to the workman/petitioner as per the Award dated 10.03.2010 amounts to Rs.70,48,146/-."

4. The petitioner has done the calculation for the first time after expiry of three years. This could have been done by him at earlier point in time. Section 19 (3) of the Act reads as under:

"19. Period of operation of settlements and awards.—

"[3] An award shall, subject to the provisions of this section, remain in operation for a period of one year⁴[from the date on which the award becomes enforceable under section 17A:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation."

5. The learned counsel for the petitioner relies on the decision of this Court in ***King Airways v. Captain Manjit Singh***, (2013) 198 DLT 749;

"6. The pilots in these petitions based their claim before the learned Tribunal on the office memo issued on 19th February, 1996 by the management offering incentives for additional flying hours to all the commanders, Circular dated 29th February, 1996 issued by the management providing for welfare expenses to all the commanders. According to the Pilots herein, from June 1995 to July 1997 the management withheld their part salaries and when they demanded their full salary and perks which were being withheld, their services were terminated. They sent letters to the management stating that the termination was illegal and their all dues be cleared. Since the management failed to clear the dues, they filed applications under Section 33-C(2) 10 Act for

computation of the dues. The industrial Tribunal awarded a total sum of Rs. 17,31,347/- each to Pritam Singh and Capt. Manjit Singh and a sum of Rs. 22,99,085/- to Capt. N.D Kathuria. The grievance of the Pilots herein is that the learned Tribunal did not grant any interest on the awarded amount despite a prayer being made in this regard and the case of the management is that the petitions filed before the learned Tribunal were not maintainable. It may be noted here that in his claim petition, Capt. Manjit Singh himself made a claim for a sum of Rs. 8,71,217/-, however the learned Tribunal awarded a sum of Rs. 17,31,347/-, which according to Capt. Manjit Singh also, is a typographical error and can be corrected by this Court.”

6. He then relies upon the judgment of the Supreme Court in ***Bombay Gas Co. Ltd. V Gopal Bhiva & Ors., AIR 1964 SC 752*** to contend that the execution of the Award can be made within 12 years. He relies upon the following paragraphs;

" The failure of the legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation under s. 33C(2). It may have been thought that the employees who are entitled to take the benefit of s. 33C(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claims which they may have to make under the said provision. Besides, even if the analogy of execution proceedings is treated as relevant, it is well known that a decree passed under the Code of Civil Procedure is capable of execution within 12 years, provided, of course, it is kept alive by taking steps in aid of execution from time to time as required by art. 182 of the Limitation Act, so that the test of one year or six months' limitation prescribed by the Payment of Wages Act cannot be treated as a uniform and universal test in respect of all kinds of execution claims.”

7. He refers to sub-sections 9 & 10 of Section 11 to contend that the Award is executable as a civil decree and the same can be done within a

period of 12 years as has been held in ***Bombay Gas Co. (supra)***. The said provisions read as follows:

"Section 11:

.....

(9) Every award made, order issued or settlement arrived at by or before Ld. Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908.

(10) The Ld. Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it. "

8. He also relies upon the dicta of this Court in ***Fincap Financial Corporation Ltd. Vs. Prem Singh & Anr*** in WP(C) No. 8344/2010 decided on 26.04.2011. The learned counsel further submits that operation and enforcement are two different things, therefore, even if the period of operation of the Award under Section 19 expires, it is nevertheless enforceable under Section 11 (9) and (10). He submits that as far as reinstatement is concerned it is not possible because the company is in liquidation and the same would not be enforceable, nevertheless the amount computed would be enforceable. However, he states that it has not been proven that the management was under liquidation. Hence, the amount as computed and sought to be enforced by the workman in terms of the Award would be payable because it is specified and Section 446 of the Companies Act would be of no assistance to the management. He submits that the learned Labour Court erred in not granting the relief which was sought.

9. He further submits that the liquidation proceedings ended before the

Company Court on 11.05.2012, therefore, it was prudent to make an application for implementation of the Award only thereafter. Furthermore, the impugned order did not deal with the application for condonation of delay. Hence, it had to be set aside. It is stated that the workman has admittedly been enrolled as a lawyer since 2009 and therefore would not be employable thereafter; his application was filed under Section 33 C(1) of the Act, however, it should have been treated as an application for computation of monies as may be payable to the applicant under Section 33C (2) of the Act. Instead of doing so, the impugned order treated the application under Section 33C (1) of the Act and dismissed it on account of limitation as prescribed under the said sub-section.

10. The learned counsel for the petitioner contends that since only computation of the amounts under Section 33C (2) of the Act has to be made; the limitation period for that is 12 years, as the Award is a decree whose enforcement can be sought in a period of 12 years under Section 11 (10) of the Act, whereunder the Labour Court/Tribunal is required to transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court is to execute the Award, order or settlement as if it were a decree passed by it. The learned counsel submits that insofar as the Award was not duly transmitted to the Court concerned, therefore, the petitioner cannot be put to a disadvantage; in any case, the petitioner has a right for enforcement of the same as if it were a decree.

11. Refuting the aforesaid contentions, the learned counsel for the respondent submits that there is a specific scheme for enforcement of the wages in the terms specified in the statute which has been laid down in the Section. The said provisions make an Award enforceable after 30 days of

publication but within the period of one year, the same can be extended to three years under section 19 (3), but not any further. He further submits that the averments made in the application itself are clear as it does not seek computation of the amount but instead it seeks payment of the amount because the applicant has already mentioned the amount which was sought to be recovered i.e. Rs.70,48,146/-. The petitioner claims that he could not file the petition under Section 33C of the Act because the employer was under the process of provisional liquidation. However, he had received intimation prior to the filing of the application that the Company had been revived hence the application had been filed. The Court would note that evidently, the application was filed three years after the publication of the Award. The limitation prescribed under Section 33C (1) of the Act is one year. Consequently, there is no possibility of recovery of monies or reinstatement.

12. The learned counsel relies upon the judgment of this Court in the case of ***Jagatjit Industries Ltd. Vs. Labour Officer & Anr. [2012 (132) FLR 124]***, which held that:-

“5. Now, it was not disputed that by virtue of Sub-Section 3 of Section 19 of the ID Act 1947, subject to the provisions of Section 19, an award remains in operation for a period of 1 year from the date on which the award becomes enforceable under Section 17(A) of the ID Act 1947 unless the period is reduced or extended by the appropriate Government in exercise of its power under either of the two provisos to Sub-Section 3 of Section 19 of the Act, a power which was never exercised. It was also not disputed by learned counsel for the parties that by virtue of Sub-Section 5 of Section 19 of the ID Act 1947, Sub-Section 3 of Section 19 did not apply to awards which imposed continuing obligation on the parties bound by the award. Further, learned counsel were not at variance that by virtue of Sub-Section 6 of Section 19, notwithstanding the period of 1 year contemplated by

Sub-Section 3 of Section 19 during which an award remains operative, the said period could be curtailed by giving a notice by either party to the other intimating its intention to terminate the award. Learned counsel also did not dispute that under Section 17(A) of the ID Act 1947 an award becomes enforceable on the expiry of 30 days from the publication of the award under Sub- Section 1 of Section 17 of the ID Act 1947 and further agreed that by virtue of the proviso to Sub-Section 1 of Section 17(A) of the ID Act the appropriate Government may declare an award not enforceable on the expiry of 30 days from the date of its publication under Sub-Section 1 of Section 17 of the ID Act 1947.”

13. He further submits that under the scheme of the Act, the Award has to be published after it is received by the Government and becomes effective within 30 days thereafter. The Award was published on 17.08.2010 and became operative from 16.09.2010. The Court would note that no application has been filed by the workman within one year of the Award. Indeed, it was not filed even within three years thereafter. The affidavit supporting the petition under Section 33C of the Act is of 07.11.2013 i.e. even beyond the three year period, which is the maximum permissible time under the second proviso to Section 19(3) of the Act. No such application was made to the Government for extension of time beyond the first year or till the third year. The application itself seeks payment of the money and not for computation of amount because the applicant had himself mentioned the amount which could be payable and sought enforcement of the same beyond the period of one year on the ground that the Company had allegedly resumed its operations and therefore, there was liquidity and there was some amounts of recoveries of the monies.

14. The learned counsel for the respondent also submits that provisions of the Limitation Act are not applicable to the present proceedings because the

same are under the Industrial Disputes Act, which is a benevolent legislation and a complete code in itself.

15. He submits that the validity of the Award itself is in question because the respondent management was under provisional liquidation and upon being intimated of the petitioner's claim before the Industrial Tribunal it had duly filed the application apprising the court that the Company was under provisional liquidation. However, the issue of validity of the Award is not in question today. Hence, discussion in that regard would be digression from the issue at hand.

16. The Court is of the view that the application itself stated that a determined and stated amount was payable to the petitioner in terms of the Award and sought implementation/payment of the same. Therefore, it is clear that the petitioner/applicant sought a specific declaration to that effect under section 33C (1) of the Act and not under Section 33C (2) of the Act. The application sought recovery of Rs.70,48,146/- from the employer alongwith the *pendent lite* interest and future interest till recovery of the amount. The petitioner's argument is untenable in view of the interpretation of section 33C by the Supreme Court in *Punjab National Bank Ltd. v. K.L. Kharbanda* A.I.R. 1963 S.C. 487; *The Central Bank of India Ltd. v. P.S. Rajagopalan* A.I.R. 1964 S.C. 743; *Kays Construction Co. Pvt. Ltd. v. The State of Uttar Pradesh and Ors.* A.I.R. 1965 S.C. 1488; and *East India Coal Company (by Chief Mining Engineer), Bararee Colliery, Dhanbad and Rameshwar and Ors.* (1968) 1 L.L.J. 6. A Division Bench of the Calcutta High Court in the case of *Jessop and Co.Vs. M. Mukherjee* (1975) ILR 1 Cal 704 summarized the principles pertaining to Section 33C as under:

“1) Where any money is due under a settlement or an award or under the provisions of chap. V-A, Section 33C(1) will be

attracted.

(2) The money due under Section 33C(1) may be a specified amount or may have to be arrived at by arithmetical calculation or verification simpliciter. In other words, in cases where there is no dispute as to the amount or as to its computation, Section 33C(1) would apply.

(3) Section 33C(2) is more comprehensive than Section 33C(1). It applies not only to cases of a settlement or award or to cases under chap. V-A of the Act but to other cases as well.

(4) When money due is not specified or the benefit capable of being computed in terms of money has not been determined, Section 33C(2) would be attracted inasmuch as the Labour Court, by a process of computation to be found out and applied by it, has to determine the amount of money due. In other words, in cases of disputes as to calculation or computation of money due or benefit capable of being computed in terms of money, Section 33C(2) has to be invoked.

(5) Section 33C(2) also enables a labour Court to enquire into and decide upon the right to receive the money to be computed provided that the determination of that right is incidental or ancillary to computation.”

17. It is clear from the execution petition that the Award dated 10.03.2010 included payment of the last drawn wages from the date of termination of service of the workman; it had also provided the rate of interest. There was no occasion for the Trial Court to adjudicate upon or compute the amount or treat the petition under Section 33C(2) of the Act. The Court would also note that the application acknowledges that the Award was duly published in accordance with law by the Government of NCT of Delhi on 17.08.2010, which acknowledged the last drawn monthly salary of the applicant/petitioner as Rs.7,000/- with an increment of 10% over and above

the last drawn salary payable. The amount calculated to be payable to the petitioner as per the aforesaid Award was claimed to be Rs.70,48,146/-. The application avers that the employer has neither reinstated the workman nor paid the last dues as awarded on 10.03.2010. In substance the application itself did not specify whether it was filed under Section 33 C(1) or 33C(2) of the Act. The Trial Court treated it under Section 33C(1) of the Act because of the relief sought in the application and accordingly rejected it because it was beyond the period permissible for enforcement of the Award for recoveries of the monies due from an employee within the period of one year specified therein. This Court finds no reason to differ with the said reasoning or conclusion.

18. Reliance by the petitioner upon the *Bombay Gas* (*supra*) is misplaced because as discussed in the said judgment, in that case the claimant had taken positive steps to keep alive the decree. Similarly, if the workman wanted to have kept alive the decree, he could have been done so by taking appropriate steps. But he did not take any steps from the date of the publication of the Award on 17.08.2010 till 07.11.2013 i.e. for more than three years. Although no limitation period has been prescribed under section 33C, nevertheless, unless sufficient cause for the inordinate delay in filing the application is explained by the party, the application would inexorably be rejected. Belated applications without explaining the delay in filing the petition are not maintainable under Section 33C of the Act.

19. For the aforesaid reasons, the Court does not find any reason to interfere with the impugned order. Accordingly, the writ petition is dismissed.

NAJMI WAZIRI, J.

NOVEMBER 25, 2016/dr/sb