

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 178 of 2003**

Asiatic Oxygen & Acetylene Company Limited, A company registered and incorporated under Indian Companies Act, 1956, having its registered Office at 8 B.B.D. Bag (East) Kolkata, 700 001, and a works inter alia at Kumhari, Distt. Durg (Chhattisgarh) present by Director Sri S.K. Mishra, being the Principal Officer and the authorized signatory for and on behalf of the Company
---- Petitioner

Versus

1. The State Of Chhattisgarh, through Secretary, Labour Welfare, DKS Bhawan, Raipur (Chhattisgarh)
2. Labour Commissioner, New Geetanjali Nagar, Raipur (CG)
3. Collector, Distt. Durg (Chhattisgarh)
4. Shri Prabhunath Mishra, aged about 50 yrs. General Secretary, the Chemical Employees Union (INTUC) Chhawni Bhilai (Hathkhoj Road) Distt. Durg (CG)
5. Shri Samelal Patel, S/o Kheduram Patel, aged about 51 yrs., Patel Para, P.O. Kumhari District Durg (CG)
6. Goverdhan Prasad Sharma, S/o Ghanaram, aged about 49 yrs., Near Gujarati Saw Mill, Station Chowk, P.O. Kumhari, Distt. Durg (CG)
7. Shri Trilochan Singh Dewangan, S/o Beluram Dewangan, aged about 61 yrs., Village Kigda, P.O. Kumhari, Distt. Durg (CG)
8. Shri R.S. Thakur, S/o Ramvilas Thakur, aged about 54 yrs., A.O.A. Colony, P.O. Kumhari, Distt. Durg (CG)
9. Shri Dinesh Kumar Mali (Sonkar), S/o Suman Singh, aged about 42 yrs., Ramnagar, P.O. Kumhari, Distt. Durg (CG) **---- Respondents**

For Petitioner	:	Mr. Chandresh Shrivastava, Advocate
For State/Respondents	:	
No.1 to 3	:	Mr. Manish Nigam, Panel Lawyer
For Respondent No.7	:	Mr. Sunil Otvani, Advocate
For Respondent No.9	:	Mr. Pradeep Saksena, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24.10.2017

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner has assailed correctness and validity of the revenue recovery notice issued by the Naib Tahsildar, Durg in purported exercise of power under Section 146 of the Land Revenue Code in the matter of recovery of an amount of Rs.11,44,032/- from the petitioner.
2. Relevant facts necessary for adjudication of controversy involved in the petition are stated infra.
3. The petitioner established a Unit for Manufacture and Sale of Industrial and medical oxygen as also Acetylene gases in the name Asiatic Oxygen and Acetylene Company limited having its industrial unit at Kumhari, District Durg. In course of time, the company became sick and an order was passed by the Board and Appellate Authority for Industrial and Financial Reconstruction (for short 'BIFR') under the provision of Sick Industrial Companies (Special Provision) Act, 1985 declaring the petitioner company sick on 27.11.1995. The company finding it unable to carry on industrial activities and bear other burden including discharge of liability towards its employee, issued a notice of temporary stoppage of work which led to a dispute between the petitioner employer on one hand and workman engaged in the industrial unit on the other.
4. Conciliation proceeding failed. Further case of the petitioner is that on 19.02.2002, a settlement was arrived at between the petitioner employer and the representative union of the employees in respect of which later on, a memorandum of settlement was also recorded on 10.04.2002. According to the petitioner, this was signed by the employees. A request for modification of the terms of settlement was made by the management to the union vide its letter dated 30.05.2002 (Annexure P/11) and it is the case of the petitioner that union accepted the proposal by its letter dated 05.07.2002 (Annexure P/13).
5. While matter stood thus, it appears that some of the employees who were

engaged as workman, instituted a parallel proceeding by way of a complaint made before the Labour Commissioner alleging that they have not been paid their salary from December, 2001 to May 2002. It appears that cognizance of those complaint was taken by the Deputy Labour Commissioner and it issued notices to the petitioner. According to the petitioner, first notice dated 23.07.2002 was received by the petitioner which was replied by the petitioner vide his letter dated 31.07.2002 (Annexure P/14) wherein the petitioner demanded supply of the copy of complaint on the basis of which the notice was issued. A reminder was also sent. Thereafter, as pleaded by the petitioner, another notice dated 01.10.2002 issued by the Deputy Labour Commissioner was received by the petitioner on 29.11.2002 to which also the petitioner replied on 06.12.2002 (Annexure P/16). Thereafter, the petitioner did not receive any communication or any order by the Deputy Labour Commissioner. Finally, impugned recovery notice under Section 146 of the Land Revenue Code issued by the Naib Tahsildar, Durg was received by the petitioner which led to filing of the present petition.

6. Submission of learned counsel for the petitioner is that the recovery notice impugned in this petition is liable to be set aside because such recovery could be made only when the amount stated therein is recoverable as an arrears of land revenue under the provisions of any other Act. According to him, in the absence of there being any order communicated to the petitioner, fastening liability for payment of the aforesaid amount which could be said to be recoverable under the provisions of the Industrial Disputes Act or Chhattisgarh Industrial Agencies Act, the proceedings under Section 146 of the Land Revenue Code could not be taken recourse to.
7. Next submission of learned counsel for the petitioner is that the petitioner's case put forth before the Deputy Labour Commissioner that the petitioner employer and the employee have already entered into settlement and therefore, no other amount except the amount under settlement could be claimed has not been examined by the Deputy Labour Commissioner. Learned counsel for the petitioner would submit that the respondents have not come out with any document placed on record to show that Deputy Labour Commissioner passed any order recording any satisfaction in terms of provision contained in Section 33(C)(1) of the Chhattisgarh Industrial

Disputes Act, 1947 (for short 'the Act of 1947') and communicated to the petitioner. Therefore, without there being any order in terms of the provision contained in Section 33(C)(1) of the Act of 1947, recovery of amount of Rs.11,44,032/- under the impugned notice is illegal and unsustainable in law.

8. On the other hand, learned State counsel referring to the reply made in affidavit would submit that the petitioner employer defaulted in making payment of wages to employees, in respect of which complaint was received in the office of the Labour Commissioner, Raipur taking cognizance of the same, notice was issued to the petitioner company and proceedings were fixed on 31.07.2002 in the office of the Labour Commissioner, Raipur. The petitioner did not attend those proceedings. Thereafter, the show cause notice was issued on 01.10.2002 by the registered post but that also did not invoke any response, therefore, the Labour Commissioner invoked powers under Section 33(C)(1) of the Act of 1947 and issued a recovery certificate for recovery of wages recoverable from the petitioner company and on the basis of the said certificate forwarded to the revenue authorities, recovery proceeding under Section 146 of the Land Revenue Code were legally instituted against the petitioner. It is submitted that once there is a certificate issued by the Labour Commissioner, in the absence of challenge to the said certificate, this petition would not be maintainable because the petitioner has chosen not to challenge the said order and proceeding of the Labour Commissioner.
9. The background leading to recovery which is not in dispute is that there existed a dispute between the petitioner employer and its employee with regard to wages. While case of the petitioner is that the petitioner and the employees through their union entered into settlement, the return of the respondents show that some complaints were received by the Labour Commissioner from the employees and on the basis of those complaints, notices were issued to the petitioner. In the petition, the petitioner has categorically averred that show cause notice was issued to the petitioner company after issuance of impugned revenue recovery certificate annexure P/1. In the reply dated 06.12.2002 (Annexure P/16), it has been stated that show cause notice dated 01.10.2002 was dispatched on 26.11.2002 and received by the petitioner on 29.11.2002. The contents of the reply of the

petitioner raised substantial issue for consideration. In the return filed by the respondents, there is no specific reply to averment made in para 5.9 in so far as allegation of receiving show cause notice after issuance of RRC is concerned.

10. During the course of argument when this Court enquired, learned counsel for the State placed before the Court a communication dated 18.10.2002 of the Deputy Labour Commissioner to the Collector, Durg for recovery of the aforesaid amount. This document has not been placed on record and the order of the same has not been supplied to the petitioner. There is no averment in the reply of the respondents that any such document was served upon the petitioner. Had it been placed on record, the petitioner would have got an opportunity of rebuttal.
11. In the absence of there being any specific rebuttal, it has to be held that the show cause notice which was issued to the petitioner was received by him only on 29.11.2002 as averred by him in his reply dated 06.12.2002 (Annexure P/16). Obviously, the impugned revenue recovery certificate was issued much prior to the same i.e. on 05.11.2002.
12. The power of the appropriate Government to issue certificate for recovery as provided under Section 33(C)(1) of the Act of 1947 is not unbridled in nature but is circumscribed by statutory prescription and condition precedent for issuance of certificate of recovery. It would be appropriate to extract herein below ; relevant provision :

“33(C)(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs 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 certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

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

Provided further that any such 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.”

13. A perusal of the aforesaid provision, would unmistakably reveal that upon receipt of an application that any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB], if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that payment to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Therefore, issuance of certificate is dependent upon satisfaction of the appropriate Government. The statutory requirement of satisfaction casts an obligation on the authority to apply its mind to the claim and the reply submitted by the employer and record reasons for satisfaction. The power in the hands of the appropriate Government is drastic in nature because issuance of a certificate shall necessarily lead to recovery of the money as an arrear of land revenue code. Under Section 147 of the Land Revenue Code, coercive steps may be initiated which include the attachment of property movable and immovable both. Therefore, before issuing a certificate, a serious application of mind is necessary and issuance of certificate cannot be mechanical in nature. There is no material placed on record by the State to convince the Court that the authority had recorded its satisfaction in the manner contemplated under the law. If I may say so, the authorities have acted in abuse of their drastic power of recovery without proper enquiry and application of mind much less recording of satisfaction which is a precondition for exercise of power of issuance of certificate of recovery.

14. The petitioner had a substantial case that the employees have already entered into settlement which is reflected by document in writing signed by workmen. If a complaint was made to the Labour Commissioner raising such dispute, disowning such agreement, it was indeed a dispute serious in nature requiring proper enquiry with reference to oral and documentary evidence. This having not been done, the decision making process leading to issuance of revenue recovery certificate suffers from gross procedural impropriety and therefore, violative of Article 14 of the Constitution of India in addition to it being in utter violation of provision contained in Section 33(C)(1) of the Act of 1947. As a matter of fact, without any communication made to the petitioner

regarding issuance of any such certificate, the proceeding for recovery as arrear of land revenue were set in motion by issuance of impugned notice of demand.

15. In the result, the impugned notice cannot be sustained in law and set aside.
16. The case would require to be remitted to the Deputy Labour Commissioner for an appropriate enquiry into the matter. The detailed reply earlier submitted by the petitioner vide his reply dated 06.12.2002 must receive serious consideration. The representative of the employee should also be afforded an opportunity of hearing by the Labour Commissioner. The parties shall be allowed to submit their written submission along with the documents before the Labour Commissioner. After affording due and proper opportunity of hearing, the Labour Commissioner shall then decide the matter and pass appropriate orders in accordance with law. Taking into consideration the interest of both the parties and it being an old matter, it would be in fitness of things, that the Labour Commissioner or the Deputy Labour Commissioner as the case may be, decides the whole matter within an outer limit of four months. The amount, if any already deposited by the petitioner as reflected in earlier orders of this Court, shall remain deposited till final decision and thereafter the same can be disposed off in accordance with the decision that may be taken by the Labour Commissioner.

17. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge