

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 4536 of 2006**

Steel Authority Of India Ltd.

---- Petitioner

Versus

State Of Chhattisgarh & Ors.

...Respondents

For Petitioner	:	Dr. N.K. Shukla, Senior Advocate with Mr. Vikram Sharma, Advocate.
For State	:	Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****17/02/2017**

Heard.

1. This petition has been filed by the petitioner assailing correctness and validity of order dated 07.07.2006 passed by the Labour Court, Durg allowing application of respondents No.3 to 12 purporting to be application under Section 33C (2) of the Industrial Disputes Act, 1947 (for short "the Act of 1947") and directing the petitioner to make payment of Rs.7,78,260/-.

2. Quintessential facts, necessary for adjudication of controversy involved in the petition are that respondents No.3 to 12 raised a dispute regarding their retrenchment by employer named "Manager Kutelabhata, Agriculture Farm, Kutelabhata, Post Zevra, Sirsa District Durg". A reference was made under Section 10 of the Act of 1947 by the appropriate Government for adjudication to the Labour Court as to whether the retrenchment of the respondents No.3 to 12 was legal or not. In the aforesaid proceeding, the employer was proceeded *ex parte* and an *ex parte* award came to be passed by the Labour Court on 08.05.92 holding retrenchment as illegal and directing reinstatement. The records also show that against the award, a writ petition was preferred before the High Court of Madhya Pradesh by respondent No.2/ J.R. Dewangan, who at that time, was working as Zonal Engineer, Town Administration Department of Bhilai Steel Plant (Unit of Steel Authority of India Limited). The *ex parte*

award was challenged on the ground that no notice was issued nor served on that respondent employer in proceeding before the Labour Court. Plea, however, did not find favour and the writ petition was dismissed vide order dated 13.05.99.

3. Alleging non-execution of award passed in favour of employees against the employer, the employees preferred an application, purporting to be under Section 33C (2) of the Act of 1947 not only against J.R. Dewangan but also against Steel Authority of India Limited. It was stated that under the award dated 08.05.92, the retrenched employees were to be reinstated and paid their wages, which has not been complied with by the employer. In that petition, it was also sought to be contended for the first time that as the award was challenged by J.R. Dewangan, who was employed in the Bhilai Steel Plant, therefore, the Bhilai Steel Plant is ultimately liable for satisfy the award.

4. The petitioner herein as well as respondent No.2 filed their respective reply before the Labour Court and resisted execution of award against them on the plea that no award was passed against the Bhilai Steel Plant nor against J.R. Dewangan. The petitioner, herein, took specific plea that the award was passed against the Manager of Kutelabhata, Agriculture farm and in the award, there is nothing to show that present petitioner i.e. Steel Authority of India Limited was held to be principal employer of the employees, in whose favour, the award was passed earlier by the Labour Court. Therefore, in the proceeding under Section 33C (2) of the Act of 1947, liability could not be fastened upon the petitioner.

5. After framing issues, the Labour Court proceeded to pass impugned order holding that the petitioner is liable to satisfy the award, as the award was passed against Manager of Kutelabhata, Agriculture farm, which was only an agent of the petitioner.

6. Learned counsel for the petitioner contended that the Labour Court in the garb of proceeding of execution of award under Section 33C (2) of the Act of 1947, has transgressed the limits of its authority and has proceeded to decide the issue of liability of the petitioner. It is contended that it was not within the scope of proceeding under Section 33C (2) of the Act of 1947 to declare that the petitioner is the principal employer and therefore, under a liability to satisfy the award. In support of submission, learned counsel for the

petitioner placed reliance upon the judgments in the cases of **D. Krishnan and anr. V. Special Officer, Vellore Co-operative Sugar Mill and Anr**¹, **President Parent Teacher Association and ors. vs. State of Chhattisgarh and ors. and batch of petitions**², **M.P. Sharma vs. Industrial Court, M.P. Indore and ors.**³, and **Nav Bharat Press vs. Presiding Officer, Labour Court & Anr.**⁴.

7. Learned State counsel submits that it is only a formal party.

8. Despite repeated opportunities granted to respondents No.2 to 12, none has appeared.

9. As to what is the scope of inquiry that can be made under Section 33C (2) of the Act of 1947, legal position is no longer res integra in view of several authoritative pronouncement of the Supreme Court and various High Courts including this High Court. In the case of **M/s. Volta's Ltd. Vs. J.M. Demello and Another**⁵, the Supreme Court observed in para 13 as under :

“13.....Although it cannot go behind the award, it is nevertheless competent to construe the award where it is ambiguous and to ascertain its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do so by an application under Section 33-C. As held in the Central Bank of India v. Rajagopalan (1964) 3 SCR 140, 152, a claim under Section 33-C(2) postulates that the determination of the question about computing in terms of money may in some cases have to be preceded by an inquiry into the existence of the right. Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section.....”

The ratio of the aforesaid judgment clearly shows that in Section 33-C(2) proceeding, the Labour Court cannot go behind the award. In a subsequent decision of this Court in the case of **Nav Bharat Press (supra)** relying upon the decision of the Supreme Court in the case of **Municipal Corporation of Delhi v. Ganesh Razak and anr.**⁶, it was held thus :

“8. The scope of proceedings under Section 33 (C) (2) of Industrial Disputes Act came up before a three judge Bench of the Supreme Court in the case of **Municipal**

1 AIR 2009 SC 395

2 WPL No.35 of 2012, order dated 14.07.2015

3 AIR 1967 Madhya Pradesh 177

4 WP No.840 of 2003, order dated 09.01.2017

5 1971 (2) SCC 479

6 1995 (1) SCC 235

Corporation of Delhi (Supra). The Supreme Court examined in great details, the statutory scheme of the Act, background of jurisdiction and upon survey of its earlier decisions in the cases of **Bombay Gas Co. Ltd. v. Gopal Bhiva**, AIR 1964 SC 752, **Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar**, AIR 1968 SC 218, **Central Inland Water Transport Corporation Ltd. v. Workmen**, (1974) 4 SCC 696, **State Bank of Bikaner and Jaipur v. R.L. Khandelwal**, 5 (1968) 1 LLJ 589, the issue regarding payment of wages are set at rest. The legal position is that the power of the Labour Court under Section 32 (C)(2) of Industrial Disputes Act extended to interpretation of award of settlement on which workman's right rests, like that of the Executing Court's power to interpret the decree for the purpose of its execution, where basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of claim if there had been no appropriate adjudication or recognition of the same by the employer. The legal position was summarised thus -

“12. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen 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 under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 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 purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.”

10. The aforesaid settled legal position leaves no manner of doubt that the Labour Court could only execute the award and could not go behind the award.

11. It is worthwhile to mention here that the respondents employees sought adjudication of a dispute on the allegation that they were employed by Manager of Kutelabhata, Agriculture farm. Upon perusal of the award passed by the Labour Court on 08.05.92, there is no whisper with regard to the liability of the petitioner that is Steel Authority of India Limited. The award nowhere adjudicates to conclude that Manager, Kutelabhata, Agriculture farm, was only an agent of the petitioner and therefore, the petitioner has to be fastened with the ultimate liability as the 'employer' as defined under the Act of 1947.

12. Curiously enough, the workmen/ respondents No.3 to 12 while filing application under Section 33C (2) of the Act of 1947 not only included the employer as stated in the award named J.R. Dewangan as the Manager of Kutelabhata, also impleaded the petitioner as a second non-applicant in those proceeding. The Labour Court completely oblivious of the scope and ambit of proceeding under Section 33C (2) of the Act of 1947, proceeded to decide the issue of liability of the petitioner as the employer of the employees which could not be gone into in execution proceeding. The Labour Court adopted completely of illegal approach, scrutinizing the oral and documentary evidence on record to record a finding that it is the petitioner who was the employer of the employee on the premise that the land on which the agricultural activity was carried out by unregistered society whose Manager was impleaded as employer in the original proceeding, was owned by the petitioner and that some of the employees of the petitioner, Unit at Bhilai Steel Plant were engaged in agricultural activity. That by itself, without anything more, could, by no stretch of imagination, be evidence of petitioner being the employer within the meaning of the word defined under the Act of 1947. In any case, this issue itself was not within the domain of jurisdiction of the Labour Court, under the proceeding of Section 33C (2) of the Act of 1947. By impugned order, the Labour Court has imposed liability on a third party. Steel Authority of India Ltd. was not even a party in the original proceeding which culminated in award dated 08.05.92.

13. It would be relevant to mention at this stage that under Section 18 of the Act of 1947 the award may be binding on the heirs, successors or assigns in respect of the establishment to which the dispute relates. But that is not the case here. By the impugned order, the Labour Court has held that the petitioner as the employer by holding that Manager Kutelabhata, Agriculture farm was employee of Bhilai Steel Plant and the agricultural activity was carried out in the land of the Bhilai Steel Plant, therefore, the Steel Authority of India is the employer. The order being completely without jurisdiction, cannot be sustained in law and is, therefore, set aside.

14. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge