

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

Reserved on: 30th October, 2018
Decided on: 16th November, 2018

+ **LPA 148/2017**

ATUL KANTI TRIPATHI

..... Appellant

Through: Mr. Pankaj Vivek with
Mr. Shashank Shekhar Jha and
Ms. Bidya Rani, Advocates.

Versus

KUBER MEDIA LTD.

..... Respondent

Through: Mr. Asim Naeem, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

JUDGMENT

Dr. S. Muralidhar, J.:

1. This appeal is directed against the order dated 25th November, 2016 passed by the learned Single Judge dismissing WP (C) No. 6008/2014 filed by the Appellant/Workman and upholding an order dated 7th June, 2014 passed by the Labour Court rejecting the Appellant's execution petition (Ex. No. 50/2013) on the ground that it was filed beyond the period of limitation.

2. The background facts relevant to the present appeal are that an award was passed by the Labour Court on 10th March, 2010 directing the Respondent Management to reinstate the Appellant with full back wages, continuity of service and consequential benefits within thirty days from the publication of the award. The failure to make such payment would make the management

liable to pay interest @ 12% p.a. till the actual date of payment to the Appellant. The award was published on 17th August, 2010 and became enforceable, 30 days after publication, on 16th September, 2010.

3. On 7th November 2013, the Appellant filed an execution petition under Section 33-C of the Industrial Disputes Act, 1947 ('Act'). The said application was captioned as being under Section 33-C, without specifying whether it was under sub-section (1) or sub-section (2) of Section 33-C of the Act. In his writ petition before the learned Single Judge, the Appellant has stated that sometime in November 2013, he learnt that the liquidation proceedings against the Respondent Company had come to an end with the High Court, by an order dated 11th May 2012, withdrawing its earlier order appointing a liquidator.

4. In the written statement filed, in opposition to the execution petition, the Respondent management raised a preliminary objection as regards limitation. Thereupon, at the hearing on 7th April 2014, the Labour Court framed a preliminary issue as to whether the claim of the Appellant was maintainable beyond limitation. The Appellant filed an application for condonation of delay, out of abundant caution, stating clearly therein that his basic plea was that his application was under Section 33-C (2) of the Act; and that if the Court was of the view that Section 33-C (1) applied, then the delay in filing the execution petition may be condoned.

5. The Labour Court by its order dated 7th June, 2014 agreed with the management. The Labour Court was of the view that since the award itself was clear and unambiguous and the last drawn wages had been set out

therein with the rate of interest also provided, “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/-.” Since it was not a disputed amount, the petition had to be “treated to be under Section 33-C (1) of the ID Act.”

6. The Labour Court then analysed Section 33-C (1) in light of Sections 19 and 17-A thereof and concluded that only the Appropriate Government had the power to extend the time for enforcement up to a maximum of three years and that “this Court has no power to extend the period of limitation for the execution of the award.”

7. The learned Single Judge concurred with the Labour Court on its interpretation of Section 33-C (1) of the Act and observed “there was no occasion for the trial Court to adjudicate upon or compute the amount or treat the petition under Section 33-C (2) of the Act.” The learned Single Judge observed that since the execution petition had to be treated as one under Section 33-C (1) of the Act and it was filed beyond the period of limitation, the Labour Court was justified in upholding the preliminary objection of the management. The learned Single Judge further observed that if the Appellant wanted to keep alive the decree “he could have done so by taking appropriate steps”. It was observed that as far as an application under Section 33-C is concerned, “unless sufficient cause for the inordinate delay in filing the application is explained by the party, the application would inexorably be rejected.”

8. This Court has heard the submissions of learned counsel for the parties. On behalf of the Appellant, Mr. Pankaj Vivek, Advocate submitted that the Labour Court erred in treating the application as one under Section 33-C (1) of the Act. That sub-section could be invoked only when the Workman was approaching the Appropriate Government for execution of the award. Referring to the wording of Section 33-C (2) of the Act, he submitted that it was not confined to those cases where the amount payable under the award was in dispute or not quantified. There was no warrant for such a restricted interpretation of Section 33-C (2) of the Act. In other words, he urged that even where the award spelt out the amount to be paid unambiguously, a workman could invoke Section 33-C (2) of the Act. Admittedly, there was no period of limitation specified in Section 33-C (2) of the Act and even otherwise, as long as there was sufficient explanation for the laches/inordinate delay, there should be no difficulty for a Labour Court entertaining such an application.

9. Mr. Vivek urged that this Court should keep in view the purpose and object of the Act which is a beneficial piece of legislation as far as the workman is concerned. The execution of an award in favour of the workman should not be allowed to be defeated on technical grounds. Mr. Vivek relied on a large number of decisions including *Bombay Gas Company v. Gopal Bhiva* AIR 1964 SC 752, *Fincap Financial Corporation Limited v. Prem Singh* 2011 SCC Online Del 1912 and *King Airways v. Captain Manjit Singh* (2013) 198 DLT 749.

10. Mr. Vivek referred to Section 19 (3) of the Act and submitted that the

award could remain, in terms of the second proviso thereto, enforceable even after the expiry of the period of one year. In support of this proposition, he relied on the decisions in *Annamma Thomas v. T. Joseph* 2 LLN (1984) 813 (Kerala) and *S. Kumaraswamy v. The South Travancore Electric Workers' Union* AIR 1958 Kerala 286. He also referred to the judgment of the Punjab & Haryana High Court in *Punjab General Mazdoor Federation v. Union of India* 2012 (134) FLR 649. Mr. Vivek submitted that since the Act is a beneficial piece of legislation intended to benefit the workman, the provisions relating to limitation are to be read as granting maximum leverage to the workman to enforce the award by initiating other modes of recovery and not limit his right to execute the award only within one year.

11. Mr. Asim Naeem, learned counsel appearing for the Respondent, on the other hand, supported the impugned judgment of the learned Single Judge and submitted that the award here was explicit as to the amount payable to the Workman. There was no occasion for the Labour Court to adjudicate upon any issue arising in connection with the computation of the amount payable thereunder. Accordingly, there was no occasion for the applicability of Section 33-C(2) of the Act. He drew attention to Section 19 (3) of the Act which stated that the award would remain in operation only for a period of one year and this provision read with Section 33-C(1) of the Act reflected the legislative intent to limit the time period available to a Workman for enforcement of an award. He submitted that from the application filed by the Workman before the Labour Court for condonation of delay, it was clear that the Appellant himself was aware that his execution petition was time barred.

12. Mr. Naeem submitted that although the management did not challenge the award since it was caught up in liquidation proceedings, it did not accept the legality of the said award. Nevertheless as far as the petition was concerned, the legal position as explained by the Supreme Court in ***Jagatjit Industries v. Labour Officer [2012 (132) FLR 124]*** was clear. He referred to the decisions in ***Punjab National Bank Ltd. v. K.L.Kharbanda AIR 1963 SC 487***, ***The Central Bank of India Ltd. v. P.S. Rajagopalan AIR 1964 SC 743***, ***Kays Construction Co. Pvt. Ltd. v. The State of Uttar Pradesh AIR 1965 SC 1488***, ***East India Coal Company v. Rameshwar (1968) 1 LLJ 6*** and finally the decision of the Calcutta High Court in ***Jessop and Co. v. M. Mukherjee (1975) ILR 1 Cal 704***.

13. In order to appreciate the above submissions, the Court would first like to examine Section 33-C of the Act which reads as under:

“33C. Recovery of money due from an employer –

(1) Where any money is due to a Workman from an employer under a settlement or an award or under the provisions of 4 Chapter VA or Chapter VB, the Workman himself or any other person authorised 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.

(2) Where any Workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub- section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.”

14. The scheme of the above provision envisages more than one mode of recovery of amount payable under an award or settlement. A workman can approach the Appropriate Government with an application under Section 33-

C (1) of the Act for enforcement of an award. Further, on a collective reading of Section 33-C(1) and 33-C (2) of the Act, it becomes apparent that Section 33-C(1) would apply when there is no dispute as to the computation of the amount payable under an award. Whenever there is a dispute and where the money due is not specified or not being capable of being computed on a reading of the award itself, the workman can approach the Labour Court with an application under Section 33-C (2) of the Act. This much stands established from the decisions cited by the learned counsel for the Respondent and which have been summarised by the Calcutta High Court in *Jessop and Co. v. M.Mukherjee* (*supra*).

15. However, the issue that arises here is different. The question is whether the Appellant has only one remedy available to him for the recovery of an amount due under an award which has a specified amount and that is to go before the Appropriate Government under Section 33-C (1) of the Act or can he also approach a Court for that purpose? Indeed, the Act is a beneficial piece of legislation and has to be interpreted as such. The Appellant/ Workman who has an award in his favour appears to have more than one mode of recovery available to him. He could either go before the Appropriate Government in which case he has to make an application, in terms of the first proviso to Section 33-C(1) “within one year from the date on which the money became due”. If he is unable to adhere to this limitation, then in the terms of the second proviso to Section 33-C (1), he can demonstrate to the Appropriate Government that there was sufficient cause for him not to make an application within time.

16. Now turning to Section 33-C(2) of the Act the language is indicative of the fact that it is not restricted to only those cases where there is a dispute about how much money is payable or its computation thereunder. Section 33-C(2) requires any of the following conditions to be satisfied before a Workman can approach the Labour Court:

- i) A Workman is entitled to receive money from an employer; or
- ii) to receive any benefit which is capable of being computed in terms of money; and
- iii) a question arises as to the money due or about the amount at which the benefit should be computed.

17. The contention of the management in the present case is that the Workman can approach the Labour Court only if there is a dispute as to the computation of money. Although a plain reading of Section 33-C (2) of the Act might seem to support such interpretation, given the object and purpose of the Act, and considering that the Act is a beneficial piece of legislation, such an interpretation would be too restrictive and would defeat the legislative intent. The conditions at (i), (ii) and (iii) above do not have to exist cumulatively for the workman's application to be maintainable under Section 33-C (2) of the Act. Further, there is no express period of limitation provided for filing such application.

18. If one turns to Section 19(3) of the Act again, it talks of the enforcement of an award by the Government and not by the Court. In this context the following observations of the Supreme Court in ***Bombay Gas Company Ltd. v. Gopal Bhiva*** (*supra*) are relevant:

“.....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. 33 C (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.”

19. Sections 11 (9) and (10) of the Act are also relevant in this context. They provide that the award can be construed to be a civil decree and therefore be executable as such. This too indicates that the period of limitation for enforcement of an award does not in all cases have to be restricted to an outer limit of one year.

20. In the present case, the application of the Appellant Workman in the Labour Court was plainly not under Section 33-C (1) of the Act. Therefore, there was no question of the Court entertaining the application under that provision. There was no occasion for the Labour Court to extend the period for filing such application under Section 33-C (1) of the Act. That was exclusively within the domain of the Appropriate Government. It is therefore futile to contend that because the Workman himself was confused, he should be held to have made an application only under Section 33-C (1)

and not under Section 33-C (2) of the Act.

21. The application filed by the Workman made it clear that he was not waiving his right to have the application considered under the provision under which it was maintainable i.e. Section 33-C (2) of the Act. His contention was that if the Labour Court was of the view that his application was under Section 33-C (1) of the Act and was, therefore, time barred, then it should consider favourably the explanation offered by him in his application for the delay and condone it.

22. The fact of the matter is that the application filed by the Appellant was maintainable before the Labour Court only under Section 33-C (2) of the Act and ought to have been considered only under that provision. The Court finds no warrant for the restrictive interpretation that since the award itself is clear as to the amount payable to the Workman, he was precluded from approaching the Labour Court under Section 33-C (2) of the Act. In the considered view of the Court the legislative intent appears to be otherwise. The additional avenue available to the Workman to approach the Labour Court for enforcement of the award, without any restriction as to limitation, was certainly available to him in the present case.

23. Even if some reasonable period of limitation is to be read in to the provision, since the provision itself is silent on that score, then it could be taken to be a period of three years after the conclusion of the proceedings in the Labour Court. It is not in dispute that the Appellant Workman filed the application under Section 33-C of the Act in the Labour Court on 7th November 2013 within three years from 11th May, 2012 and therefore even

by that yardstick, it could not be said that his application was barred by laches or delay.

24. Therefore the Court is unable to agree with the view taken by the Labour Court, which has been affirmed by the learned Single Judge in the impugned judgment, that the Appellant Workman's application before it under Section 33-C (2) of the Act was time barred.

25. Consequently, this Court sets aside the impugned judgment of the learned Single Judge as well as that of the Labour Court and restores the application of the Workman to the file of the Labour Court for further proceedings in accordance with law. The application will be listed before the Labour Court on 1st December, 2018. The Labour Court will proceed to dispose of the claim on merits not later than three months thereafter in accordance with law. Needless to state that the Labour Court will not entertain any further plea of the Respondent/management as to the maintainability of the application before it.

26. The appeal is allowed in the above terms with costs of Rs.10,000/- which shall be paid by the Respondent to the Appellant within four weeks.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 16, 2018

mw