IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19653 of 2019

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SURESHKUMAR CHANDUBHAI PARMAR

Versus

THE DISTRICT COLLECTOR

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Appearance:
MR UT MISHRA(3605) for the Petitioner(s) No. 1
MR NIKUNJ KANARA, ASST.GOVERNMENT PLEADER(1) for the Respondent(s) No. 1
MR HS MUNSHAW(495) for the Respondent(s) No. 2
NOTICE SERVED BY DS(5) for the Respondent(s) No. 1
NOTICE SERVED(4) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**

Date : 27/02/2020

ORAL ORDER

1. Present petition is preferred under Article 226 of the Constitution of India seeking following reliefs:

> *"9...*
>
> *(A) That Your Lordships be please to issue an order, direction and/or writ in the nature of mandamus and/or any other appropriate writ, order or direction, directing the respondent District Collector to immediately execute the Recovery Certificate dated 27.02.2019 and recover the amount and same may be deposited in the Registry of Labour Court, Nadiad;*
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> *(B) That Your Lordships be further pleased to direct the Labour Court, Nadiad to immediately disburse the amount in favour of the petitioner after proper verification;;*

(C) Any other and such further relief as the Hon'ble Court deems fit and proper in the interest of justice together with costs."

2. The question concerns execution of Recovery Certificate issued on 27.02.2019 and therefore without entering in detail of the facts, the reference is needed to be made of Special Civil Application No.21281 of 2019 decided by this Court on 11.02.2020 with the following order:

"1. This is a petition preferred under Article 226 of the Constitution of India seeking the following reliefs.

(A) That Your Lordships be pleased to issue an order, direction and/or writ in the nature of mandamus and/or any other appropriate writ, order or direction, directing the respondent District Collector to immediately execute the Recovery Certificate dated 27-2-2019 and recover the amount and same may be deposited in the Registry of Labour Court.

(B) That Your Lordships be further pleased to direct the Labour Court, Nadiad, to immediately disburse the amount in favour of the petitioner after proper verification;

(C) Any other and such further relief as the Hon'ble Court deems fit and proper in the interest of justice together with costs.

2. The facts leading to the present petition are as under.

(I) The petitioner raised the industrial dispute registered as Reference (LCN) No.8 of 2013, which came to be adjudicated by the Labour Court, Nadiad where the judgment and award was passed on 04.01.2017. The respondent-employer was directed to reinstate the petitioner on his original post with continuity of service and with 25% of back-wages.

(ii) It is the grievance on the part of the petitioner that the respondent did not comply with the award and the petitioner was not reinstated, therefore, the application under Section 33 (C) (2) of the Industrial Disputes Act (I.D.Act hereinafter for short) was preferred and the said application was registered as Recovery Application No.175 of 2017. The Recovery Application was allowed and the respondent employer was directed to pay a sum of Rs.66,876/-. The said order since was not complied with and therefore, the petitioner once again moved the application being Recovery Application under Section 33 (C) (1) of the Industrial Dispute Act, which was registered as Recovery Application NO.25 of 2018. The same

was allowed vide order dated 11th January, 2019 and the Court issued the Recovery Certificate in the name of the District Collector, Nadiad vide certificate dated 27th February, 2019.

(iii)The grievance on the part of the petitioner is that the Collector though received the same, has not taken any steps, and he on various occasions communicated and urged to expedite and yet, no heed was paid, therefore, the present petition with the above prayers.

3. The State has filed the affidavit-in-reply where it has not disputed other aspects, however what has been emphasized is that the respondent no.2 herein is required to comply with the direction as the Government circular dated 25th February, 2005 issued by the Revenue Department, the State of Gujarat prescribed jurisdiction and case of rural area where the jurisdiction is of the Panchayat, it is the District Development Officer, who is an authority to execute the Recovery Certificate. Here that being the case, the respondent no.2

District Development Officer and not the Collector shall be responsible to execute the recovery certificate. It is further stated that the office of the Collector has already sent the reminder to the District Development Officer, Kheda, District Panchayat, Nadiad to do needful in the matter. A copy of the said communication is also found in the part. It is also stated that every month the meeting needs to be conducted as it is essential for the recovery certificate to be executed within time.This needs to be done under the supervision and guidance of the Collector or the District Development Officer as the case may be.

4. This Court has heard Mr.U.T.Mishra, learned advocate for the petitioner, Mr.Nikunj Kanara, learned advocate for AGP for the respondent – State and learned advocate Mr.Sagar Gohel for Mr.H.S.Munshaw, learned advocate.

5. The stand has been made very clear by the Residential Collector in his affidavit-in-reply, it is quite apparent therefore that jurisdictional aspect falls within the realm of the District

Development Officer. The Collector has already discharged his functions and sent reminder to the District Development Officer, nothing appears to have been heard thereafter from the end of the District Development Officer. There is no material emerging on the record that he has conducted the meeting. Monthly meeting on regular basis has been directed to be held in the resolutions dated 25th February, 2005 and 2nd June, 2005. Once the recovery certificate is issued by the Court in the matter, after the long drawn litigations, the party is compelled to once again take recourse of law and approach this Court. This lackadaisical attitude on the part of the concerned authority is neither desirable nor acceptable at all. The recovery under the certificate has to be effected as per the recovery of revenue under the Land Revenue Code and there is a detailed guideline prescribed in the form of resolution issued by the State Government. Petitioner had to go from the post to pillar to get the amount prescribed in the certificate. His having done all that he could have done at his command, somewhere, it is an absence of period of limitation prescribed in

completing task of executing recovery certificate is hampering the process. At the cost of reiteration, it is to be noted that under the law, for recovery certificate to be executed, there exists vaccume so far as the time limit is concerned. It is being experienced that much delay is caused in executing the recovery certificate on account of such lacuna and the required attention to this essential cause is missing more often than not. This is a class of people who have scant means at their disposal, not to refer to their very humble social background which does not permit them any access to these authorities except by means of legal documents in the form of recovery certificate that too, after a protracted litigation. Execution of recovery certificate within a reasonable time period therefore assumes an importance and in absence of any statutory period, a reasonable time period shall need to be regarded which cannot go beyond six months and in the event of auction etc. beyond one year period. P.I.L. S.C.A. No.3954 of 2001 filed before this Court was also against the uproar of non execution of recovery certificate, pursuant to which revenue

department issued resolution dtd.25.02.2005, which contain following details.

> *1. Competent authority / office is required to make note of recovery certificate in the register.*
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> *2. They are required to be duly examined and if they lack any details or other requirement, they be returned on an issuance of notice to the judgment debtors entire procedure be completed on urgent basis under the Land Revenue Code.*
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> *3. It would also be necessary to ascertain whether bank or any other agency has utilized other resources of recovery.*
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> *4. Recovery certificates if are concerning jurisdiction of Panchayat, they be sent to the concerned Panchayat and the competent officer be initiated to effect the speedy recovery.*
>
> *5. Any lackadaisical approach on the part of any officer/employee or deliberate*

attempt not to act shall be reported in their confidential report.

6. Capacity building efforts by means of training etc. shall be enhanced.

7.Judgment debtors when are not traceable in consultation with the senior officer of police department, their hunt be expedited.

8.Delay in recovery defeats the very purpose and object and essence of decision of the Court and therefore, the departmental proceedings be initiated against those who delayed the recovery.

9.Wherever the debtors take recourse of Court proceedings, it shall be ensured that the Court matters proceed expeditiously.

10.For overcoming slow pace in effecting recovery, 'Prant' office in every

district is to act as nodal officer.

11.Officers of the District Collector, D.D.O. & T.D.O. Shall have quarterly accounts of proceeding of recovery certificate.

12.Competent authority is also required to evaluate the register - 'A' and send the same every month to the Revenue Department before the 10th day of every English calendar month. Subsequently, issued resolution dated 02.06.2005 also reiterates this guidelines and adds further that the nodal officer must organize monthly meeting with the Mamalatdar, T.D.O. For reviewing.

6.These are thus, very eloquent and specific guidelines, directions in the form of mandates, pursuant to the PIL. Preferred before this Court. However, they are observed often in their breach and that is essentially due to absence of

any supervision or administrative guidance on the part of senior officer.

7.The State has also directed to the officers who are to at the helm of affair to supervise and it seems that what is lacking is the execution and lack of proper administration and desired guidance.

8. It is more often than not experienced that Mamlatdar is assigned the task of recovery without anyone, then following the same up, resultantly into piling of the matters as well as miseries of the creditor workmen. It is thus clear from the chronology that the petitioner who served the Gujarat State Electricity Corporation and Design Limited at Thermal Power Station, Thasra, District – Kheda raised an industrial dispute in 2013, where he succeeded in the year 2017 and thrice he approached the labour Court and yet, till date, he has neither received the amount nor has he been replied to D.D.O. Is intimated by the Collector in September, 2019 once again and

yet no effective measurements are taken.

9. Resultantly, this petition is allowed in the given facts and circumstances, let the recovery certificate issued by the trial Court on 27.02.2019 be executed in 8 (eight) weeks' time and the amount specified in the recovery certificate be disbursed in favour of the petitioner. In the event of failure on the part of the respondent no.2 to effect such recovery, he shall be held personally responsible for such recovery and shall also be held accountable not only to the Court but also departmentally for his non performance. Let the same, in the event of failure, be referred to his superiors for noting in his confidential report, as prescribed in the resolution dtd. 25.02.2005 and for necessary action at the end of his disciplinary authority.

10. Let the copy of this order be sent to the District Development Officer personally by the learned advocate Mr.H.S.Munshaw to ensure that he receives the copy. In the event of non recovery within the stipulated time, cost of this petition

of Rs.20,000/- (In words Rupees Twenty Thousand Only) shall be paid by the State, to be recovered from the respondent no.2. Direct service is permitted. With the above, the present petition is disposed of."

3. Resultantly, this petition is allowed in the given facts and circumstances, let the Recovery Certificate issued by the trial Court dated 27.02.2019 be executed within a period of 08 (eight) weeks from the date of receipt of a copy of this order and the amount specified in the Recovery Certificates be disbursed in favour of the petitioner. Direct Service is permitted.

(SONIA GOKANI, J.)

M.M.MIRZA