

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8067 OF 2017

1. M/s. Bennett Coleman & Co. Ltd.
The Times of India Building, 4th floor,
Dr. D.N. Road, Mumbai – 400 001.

2. M/s. World Wide Media
(A Times Group BBC World Wide JV)
The Times of India Building, 4th floor,
Dr. D.N. Road, Mumbai – 400 001.

... Petitioners

Versus

1. Madan Singh Mehra
Sidharth Colony, "A" Guru Chawl no. 10,
Room No. 01, Chembur, Mumbai – 400 071.

2. Tarun Rai
Chief Executive Officer (CEO)
M/s. World Wide Media
A Times Group BBC World Wide JV)
The Times of India Building, 4th floor,
Dr. D.N. Road, Mumbai – 400 001.

... Respondents

Mr. Vijay Vaidya a/w. Mr. Mahendra M. Agavekar and Ms. Shraddha Chavan for the petitioner.
None for the respondents

CORAM: G. S. KULKARNI, J.
DATED: 10 January 2023

ORAL ORDER

1. Heard Mr. Vaidya, learned counsel for the petitioners. None appears for the respondents.

2. The challenge in this petition is to an order dated 30 November, 2015 passed by the Labour Court in Application (IDA) No. 179 of 2014 filed on

behalf of petitioner nos. 1 and 2. By the impugned order, the application filed by the petitioners praying that the preliminary issue be framed to the effect that there is no relationship between the employer and employee, namely, between the petitioners-employers and respondent no. 1-employee, was rejected. The proceedings in question before the Labour Court were proceedings filed by respondent no. 1 under the provisions of Section 33C(2) of the Industrial Disputes Act whereby respondent no. 1 prayed for an amount of Rs.2,05,800/- to be paid to the petitioners on balance privilege leave wages, balance unpaid bonus, unpaid legal dues, namely, one month notice pay, retrenchment compensation, gratuity amount. In such proceedings, the petitioners appeared and raised an objection to the maintainability of such proceedings on the ground that respondent no. 1 was never the employee of the petitioners and in fact he was employee directly by respondent no. 2-Tarun Rai, who was the Chief Executive Officer of petitioner no. 2-M/s. World Wide Media. Learned Judge of the Labour Court adjudicated the claim as made by respondent no. 1 by framing the following two issues on 14 January, 2015:

“1. Does the Applicant prove that he is entitled to receive the amounts as claimed in this Application?

2) What amount is the applicant entitled to receive from the Opponents?”

3) What Order?

3. The petitioners moved an application for modification of the said issues thereby contending that the following additional issues be framed:

“1) Does the Applicant prove that this Hon’ble Court has power and jurisdiction to decide the issue of master and servant relationship in a matter under Section 33C(2) of the Industrial Disputes Act, 1947?

If Yes,

2) Does the Applicant prove that there exists master and servant relationship between Opponent no. 1 and the applicant?

3) Does the applicant prove that he has existing right to demand or claim the money/benefit described in Annexure ‘A’ to the Application?

4. Petitioner no. 1 and Petitioner no. 2 filed their independent applications which were similar as noted above. Such application came to be rejected by the impugned order dated 30 November, 2015 wherein the learned Judge of the Labour Court has simplicitor observed that the proceedings under section 33C(2) of the Industrial Disputes Act, being executory in nature, the objection as raised by the petitioners as also the request to frame additional issues cannot be entertained and such issues cannot be framed. Such order has also been confirmed by the learned Labour Judge by dismissing the Review Application filed by the petitioners by order dated 8 February, 2017.

5. Mr. Vaidya, learned counsel for the petitioners has drawn the Court’s attention to the provisions of Section 33C(2) of the Industrial Disputes Act as also the definition of “Employer” as defined under section 2(g) and “Workmen” as defined under section 2(s) of the Act. His contention is that

even for invoking Section 33C(2) of the Industrial Disputes Act necessarily there has to be relationship of an employer and employee between the parties to the proceedings which according to him, is clear from the reading of the said provision itself, which provides for recovery of dues from an employer. He submits that there was no material on record of the Labour Court which would indicate that respondent no. 1 was an employee of the petitioner so that the provisions of Section 33C(2) would become applicable.

6. Having heard Mr. Vaidya, learned counsel for the petitioners and having perused the impugned order as also the record, in my opinion, there is an ex-facie illegality in the impugned order passed by the Labour Court in dismissing the petitioners' application, simplicitor on the ground that the procedure of Section 33C(2) of Industrial Disputes Act is executory in nature hence there is no jurisdiction for the Labour Court to consider whether any employer-employee relationship would exist. To examine the contention as urged on behalf of the petitioners, the relevant provisions are required to be noted. Section 33C of the Industrial Disputes Act reads thus:

"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 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 a 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.

Explanation.-- In this section " Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State."

(emphasis added)

7. A bare reading of Section 33C makes it clear that it is a provision providing for recovery of money due from an employer. Sub-section (2) categorically provides that where any “workman” is entitled to receive from the “employer” any money or any benefit 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 the ID Act, be decided by such Labour Court, inter alia within a period of six months. It is thus apparent from the very initial words as used in Section 33C(2) that it is only the workman who should be entitled to receive from the employer such amounts. Thus a relationship of the person demanding such amount from the employer necessarily has to be that of as workman and not any other person who is not a workman of an employer. The term 'workman' has been defined under Section 2(s) of the ID Act which reads as under:-

*2 (s) " **workman**" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--*

i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding Ten Thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

8. Thus, from the reading of the aforesaid provisions, the only inference which can be drawn is that Section 33C can be invoked by a workman against an employer. Thus, the basic ingredients of there being employer-employee

relationship is a *sine qua non* in invoking the jurisdiction of the Industrial Court/ Labour Court under Section 33C(2) of the Act.

9. In my opinion, the reasoning of the Labour Court in the impugned order as also the order under review that Section 33C(2) being an executory provision, the Labour Court would not have jurisdiction to determine whether there exists an employer workman relationship, and for such reason reject the application of the petitioner for framing of an additional issue is not the correct approach. No doubt that the proceedings under section 33C(2) are executory in nature, however, certainly from the plain reading of the aforesaid provisions, it clearly appears that the very foundation of the adjudication would be on the basis that there exists an employer – workman relationship between the parties for the Labour Court to exercise jurisdiction.

10. In the above circumstances, in my opinion, the petitioner had made out a case to succeed in the application praying for additional issue to be framed, and such application would be required to be allowed.

11. In the light of the above discussion, the petition needs to succeed. It is accordingly allowed in the following terms:-

- (i) The impugned order dated 30 November, 2015 is quashed and set aside;

(ii) The applications as filed by the petitioners below Exhibit C-3 and C-4 stand allowed.

(iii) The Labour Court shall accordingly adjudicate the applications on the original issue as also the additional issues as permitted to be framed by the present order.

(iv) As the issue is short, the Labour Court is directed to decide the application of respondent no. 1 as expeditiously as possible and in any event, within a period of four months from today.

12. Disposed of in the above terms.

(G. S. KULKARNI, J)