



2024 : DHC : 855



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 31st January, 2024**
+ **W.P.(C) 15833/2023**
RAJU KUMAR SAH Petitioner
Through: **Ms. Meghna De and Ms. L.Gangmei,**
Advocates.
versus

SUB DIVISIONAL MAGISTRATE DWARKA AND ANR
..... Respondents
Through: **Mr. Karn Bhardwaj, ASC (GNCTD)**
with Mr. Shubham Singh and Mr.
Rajat Gaba, Advocates for R-1.
Mr. Arjun Mahajan, SPC for UOI,
Ms. Neha Rai, ADV and Mr. Apoorv
Upmanyu, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India, seeks the following reliefs:

- “a. Issue an appropriate writ, order, or direction to Respondent No. 1 to recover in terms of Recovery Certificate No. ND/17/M-1617/2022-B-II dated 07.08.2023 arising from Award dated 04.12.2014 in I.D No. 104/2012;*
- b. Issue an appropriate writ, order, or direction to Respondent No.2 to implement the Award dated 01.04.2014 passed by the Industrial Adjudicator in I. D No.104/2012 which has been upheld by this Hon'ble Court and has attained finality;*
- c. Direct the Respondents to pay interest for the delayed payment at the rate of 9% p.a. from the date the said amount became due till the date of payment*



d. Impose exemplary costs on the Respondents for delaying Recovery Proceedings;

e. Pass any such other or further order as this Hon'ble-Court may deem fit and appropriate in the facts and circumstances of the case in favour of the Petitioner.”

2. The petitioner-workman was employed with the respondent no. 2, i.e., the Controller General of Patent and Design Trade Marks. The management terminated services of the petitioner without giving one month notice or pay in lieu thereof and retrenchment compensation.

3. Thereafter, an industrial dispute was raised by the petitioner and the claim was adjudicated in favour of the petitioner workman vide award dated 1st April, 2014 in I.D. No. 104/2012 by learned Presiding Officer Central Government Industrial Tribunal No. I, Karkardooma Courts Complex, Delhi. As per the said award, the respondent management was directed to reinstate the petitioner and further held the petitioner to be entitled to 40% of his last drawn wages as back wages for the period of interregnum.

4. Pursuant to the said award, the Union of India challenged the same before a Coordinate Bench of this Court in writ petition bearing W. P (C) 3495/2015, wherein, the Coordinate Bench upheld the above said award and disposed of the said writ petition vide judgment dated 20th January, 2020. Subsequently, the order of the Coordinate Bench was challenged before the Division Bench of this Court in appeal bearing LPA No. 91/2020. Meanwhile, being aggrieved by the non-implementation of the award, the petitioner filed a contempt petition bearing Cont. Cas (C) No. 222/2020, and the same was disposed of in view of pendency of the above stated appeal.



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Subsequently, vide order dated 31st July, 2023 the above stated appeal was disposed of as not pressed.

5. In the meanwhile, the petitioner filed an application under Section 33C (1) of the Industrial Disputes Act, 1947. Thereafter, in the said application, a recovery certificate no. ND/17/M-1617/2022-B-II dated 7th August, 2023 was issued in terms of the award dated 1st April, 2014 in ID No. 104/2012 and the said recovery certificate was sent to the office of District Magistrate, directing to initiate recovery in terms of the awarded amount.

6. It has been stated by the petitioner that he had made several visits to the office of the respondent no. 1 for the execution of the recovery certificate. However, the respondent no. 1 failed to take steps in effectuating the said recovery certificate and being aggrieved by the same the petitioner has approached this Court seeking directions of recovery due in terms of the aforesaid recovery certificate arising from the award dated 1st April, 2014 and implementation of the same.

7. Learned counsel appearing on behalf of the petitioner submitted that the inaction on behalf of the respondents is arbitrary and the delay in executing the recovery certificate is without any cogent reason which is ultimately violating the petitioner's rights.

8. It is submitted that even after passing of the award dated 1st April, 2014 in ID No. 104/2012 in favour of the petitioner, he is being forced to run from pillar to post for implementation of the same, and as such he has not been granted the benefits that he is entitled to receive under the said award.



9. It is submitted that the non-implementation of the above said award amounts to unfair labour practice as envisaged under Section 2 (ra) read with Item no. 13 of the Schedule V of the Industrial Disputes Act, 1947.

10. It is submitted that the inaction of the respondent is nothing but a *mala fide* and deliberate harassment of poor workman and it is also a willful disregard for the procedure established by law and disobedience of the guidelines issued from time to time *qua* the execution procedure.

11. It is submitted that this Court in *Laxman Singh & Anr. v. The Regional Labour Commissioner & Anr.*, in W.P (C) no. 7119/2014 had held that it is the duty of the government to get the award implemented in favour of the workman. In the present case, both the respondents are organs of the government and instead of fulfilling it, the respondents are abdicating their duties.

12. It is submitted that the petitioner is in dire need of money and due to the unjustified delay on the part of the respondents, grave injury is being caused to the petitioner.

13. It is, therefore, submitted that in view of the foregoing submissions, the instant petition may be allowed and the reliefs be granted as prayed for.

14. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that instant petition, being devoid of any merits is liable to be dismissed.

15. It is submitted that in terms of the order of the Predecessor Bench of this Court, the respondent no.1, i.e., the Sub Division Magistrate, Dwarka



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(hereinafter “SDM”) has filed a combined status report on 29th January, 2024 in W.P.(C) 15796/2023.

16. It is also submitted that as per the status report the above said recovery certificate was received from the Deputy Chief Labour Commissioner, Ministry of Labour & Employment on 9th August, 2023 and in view of the same, notices were issued to the judgment debtor, i.e., the Controller General, Patent & Design Trade Marks, by the Tehsildar (Dwarka) on 18th August, 2023 with the directions to appear in person and to submit the proof of deposit of recovery amount in the competent court or deposit the requisite amount in the SDM Office.

17. It is further submitted that upon non compliance of the above said notices, warrants of arrest under Section 138 of the Delhi Land Reforms Act, 1954, were issued by the then SDM, Dwarka on 26th September, 2023 with the directions to the SHO, Dwarka North to arrest the judgment debtor, i.e., the Controller General, Patent & Design Trade Marks and to produce him before the SDM, Dwarka for recovery of amount as per the recovery certificate.

18. It is submitted that thereafter a report was received from the SHO, Dwarka North on 19th October, 2023, stating therein, that upon visit of the police, it was informed to them that the file in the matter in question has been sent to the higher authorities.

19. It is submitted that a letter dated 25th October, 2023 was sent by the HOD, Patent Office, New Delhi, Ministry of Commerce & Industries, to the SDM, Dwarka where the judgment debtor sought for extension of time as



they are in process of filing a writ petition against the execution and informed that the same is pending for approval from the higher authorities. It further requested for remanding back the matter to the concerned Regional Labour Commissioner.

20. Heard and perused the record including the status report filed by the respondent no. 1 on 29th January, 2024 in W.P.(C) 15796/2023.

21. The petitioner is aggrieved by the alleged inaction and failure of the respondent no. 1 in executing the recovery certificate arising from the award made in favour of the petitioner. It has been submitted on behalf of the petitioner that the respondent no. 1 is willfully and deliberately not executing the recovery certificate and due to the same the petitioner is suffering gravely.

22. At this stage, it is pertinent to mention here that the petitioner by way of the present petition has sought for directions against the respondents in the nature of issuance of a writ of mandamus.

23. It has already been ascertained by the Hon'ble Supreme Court that a writ of mandamus is used for enforcing the performance of a public duty. It is a settled law that in order to issue such a writ, the Courts have to be hyper-vigilant since the same falls under the extraordinary jurisdiction which is only to be invoked upon special occasions and in exceptional circumstance. The said principle has been reaffirmed by the Hon'ble Supreme Court in a catena of judgments such as *Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh*, (1977) 4 SCC 145; *Lekhraj Sathramdas Lalvani v. N.M. Shah*, AIR 1966 SC 334; *Rai Shivendra Bahadur*



(Dr.) v. Nalanda College, AIR 1962 SC 1210; Umakant Saran (Dr.) v. State of Bihar, (1973) 1 SCC 485 and Oriental Bank of Commerce v. Sunder Lal Jain, (2008) 2 SCC 280.

24. This Court is of the considered view that there is sufficient authority as per which in order to grant relief as prayed by the petitioner in the present petition, there has to be a legal right in his favour which has been violated by a public authority by not fulfilling the obligation which it ought to have done. In other words, a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the authority concerned and there is a failure on the part of that authority to discharge the statutory obligation.

25. In the present case, the Predecessor Bench of this Court, vide order dated 8th December, 2023, had directed the respondent no. 1 to file a status report and in compliance to the same, the status report has been filed on 29th January, 2024 which is on record. This Court has perused the contents of the said status report and the relevant portions of the same have been reproduced herein below:

“... In the aforesaid regard, the status report in the above said matters is being submitted for kind perusal of the Hon’ble Court:

1. That recovery certificates in all five matters were received from Dy. Chief Labour Commissioner, Ministry of Labour & Employment, on 09/08/2023 (Copies annexed as Annex.-I) and notices were issued to the Judgment Debtors (JDs) by the Tehsildar (Dwarka) on 18/08/2023 (Copies annexed as Annex.-II) with the directions to appear in person and to



submit the proof of deposit of recovery amount in the competent court or deposit the requisite amount in this office.

*2. On non-compliance of the above said notices, Warrants of Arrest U/s 138 of DLR Act, 1954, were issued by the then SDM (Dwarka) on 26/09/2023 in all above five cases, with the directions to SHO (Dwarka North) to arrest the JD i.e. the Controller General, Patent & Design Trade Marks and to produce him before the SDM (Dwarka) for recovery of amount as informed by the Dy. Chief Labour Commissioner (**Copies annexed as Annex.-III**).*

*3. Thereafter, a report on 19/10/2023 was received from the SHO (Dwarka North) stating therein that the police staff visited the office of JD i.e. the Controller General, Patent & Design Trade Marks and during visit Dr. Kumar Kartikey Yadav (HOD) was found available in the office, who informed that they have sent the file in the matter in question to the higher authorities (**Copies annexed as Annex.-IV**).*

*4. Further, it is submitted that a letter dated 25/10/2023 issued by the HOD, Patent Office New Delhi, Ministry of Commerce & Industry, was also received in this office on 25/10/2023 in reference to all the above notices issued by this office as stated at point No. 1 & 2 above (**Copy annexed as Annex.-V**). The request made by them vide this letter is being reproduced as under:*

1. That this office has submitted a reply to Regional Labour Commissioner, Dwarka and has requested to take on record the submitted reply and reconsider its decision of the six notices No.ND/17/M-1617/2022-B-I, No.ND/17/M-1614/2022-B-II, No.ND/17/M-1618/2022-B-II, No.ND/17/M-1616/2022-B-II], B-III, and No.ND/17/M-



1615/2022-B-I], all dated 07.08.2023, issued to SDM office.

2. Requested to provide this office a hearing before taking any decision in the matter. Further, it is to inform that this office is in the process of filing a writ petition at Hon'ble High Court of Delhi with the prayer to stay the execution. The same has been approved by O/o CGPDTM and it is presently being forwarded to DPIIT for approval and opinion of Ministry of Law and Justice.

In view of the above facts and circumstances, it is prayed with the SDM Dwarka that:

a. The above six notices (Warrant of arrest u/s 138 Delhi Land Reforms Act, 1954) No. F.10 (8)/ DW/ REC/ 2023/ 63576, No. F.10 (8)/ DW/ REC/2023/63581, No. F.10 (8)/DW/REC/2023/63580, No. F.10 (8)/DW/REC/2023/63578, No. F.10 (8)/DW/REC/2023/ 63572, and No. F.10 (8)/DW/REC/2023/63574, all dated 26.09.2023 may be withdrawn and extension of 12 weeks time may be granted to respondents to seek the necessary approval for filing of writ petition.

b. It is requested to cancel the warrant of arrest u/s 138 Delhi Land Reforms Act, 1954, against "The controller General, Patent, Designs & Trade Mark Through Assistant Controller of Patents & Design, Patent Office, Baudhik Sampada Bhawan, Plot No. 32, Pkt-1, Sector-14, Dwarka, New Delhi-110075"



c. It is requested to remand back the present matter to Regional Labour Commissioner (Central), Dwarka, G-4, Sector 10, Dwarka, New Delhi-75 for considering the present reply, and providing an opportunity of hearing under natural justice to the respondents before issuing any decision.

5. In the present matter, the Hon'ble Court is also informed that a letter dated 10/01/2024 seeking fresh report of recovery in all the above stated cases has also been issued by this office to SHO (Dwarka North) (Copy annexed as Annex.-VI) and a reminder in this regard has also been issued on 23/01/2023 (Copy annexed as Annex.-VII)....”

26. Upon perusal of the above stated status report, it is inferred that in view of the recovery certificate issued by the Deputy Chief Labour Commissioner, Ministry of Labour & Employment; the SDM, Dwarka had issued notices on 18th August, 2023, to the judgment debtor thereby, directing the concerned person of respondent no. 2 to appear in person and to produce proof of deposit of money in terms of the said certificate and if not, then to deposit the said amount in the office of SDM, Dwarka.

27. The status report further states that the respondent no. 2 had failed to comply with the directions passed vide the above said notices and consequently, warrants of arrest under Section 138 of the Delhi Land Reforms Act, 1954, were issued by the then SDM, Dwarka on 26th September, 2023 with the directions to the SHO, Dwarka North to arrest the judgment debtor, and to produce him before the SDM for recovery of amount as per the recovery certificate.



28. Thereafter, the concerned SHO submitted a report before the SDM as per which the judgment debtor had stated that the file of the workman has been sent to the higher authorities for further action. Then, vide the letter dated 25th October, 2023 sent by the HOD, Patent Office, New Delhi, Ministry of Commerce & Industries, to the SDM, Dwarka, the judgment debtor sought for extension of time to file a writ petition against the execution and also requested for an opportunity to be heard before the Regional Labour Commissioner by remanding back the matter.

29. Upon contemplation of the status report as observed and noted above, it is certain that the proceeding before the SDM has reached a considerable stage, wherein, the recovery proceedings have been initiated vide the above said recovery certificate. Moreover, after the issuance of the recovery certificate, the concerned SDM had issued notices on 18th August, 2023 to the judgment debtor, i.e., the respondent no. 2 authority against whom the Industrial Tribunal had made an award to deposit certain sum of money in favour of the petitioner.

30. This Court is of the considered view that it is not the case that the SDM is not fulfilling the duty imposed upon him under the law. Pertinently, upon non-appearance of the judgment debtor, after the issuance of the above said notice, the SDM had issued warrants of arrest under Section 138 of the Delhi Land Reforms Act, 1954. A report was submitted by the SHO before the SDM on 19th October, 2023 stating that they had visited the respondent no. 2's office and they have been informed by them that the files of the workman have been processed and is pending before the higher authorities.



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31. The contents of the status report also states that vide letter dated 25th October, 2023, the respondent no. 2 had sought extension of time and an opportunity of hearing. Thereafter, the SDM had sent a letter dated 10th January, 2024 and a reminder dated 23rd January, 2024 to the SHO, (Dwarka North), thereby, seeking a fresh report of recovery.

32. In light of the status report filed on behalf of the respondent no.1 SDM, this Court does not find any cogent reasons to pass any directions against the respondents at this stage.

33. This Court deems it appropriate to state that the settled law does not permit the Constitutional Courts to intervene with the proceedings and functioning of a Court/Authority below until and unless the same is necessary to avoid any miscarriage of justice or to protect a party's rights, and interests if it is being violated by way of non-performance of a public duty.

34. In the absence of any unjustified delay and inaction of the concerned authority, the petitioner does not has a vested right to seek the relief for implementation of the recovery certificate arising out of the award in his favour under the writ jurisdiction.

35. In light of the same, this Court is of the considered view that given the limited scope of writ of mandamus, the present case does not show any record which would imply that the rights of the petitioner are being hampered and considering the same, this Court is not inclined to issue a writ as prayed for. The petitioner has been unable to show as to how the respondents are not adhering to the legal duties imposed upon them or how



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have they failed to perform the said duty and in case any *mala fide* at the behest of the respondents is involved, the petitioners have utterly failed to establish any propositions *qua* the same.

36. This Court is also of the view that intervening with the process of execution proceedings is not required at this stage as the record and the status report shows that requisite steps have been taken by the respondent no. 1, i.e., SDM Dwarka. This Court, under the garb of a writ Court, cannot act or become a Court of execution as the same would defeat the purpose of the executing courts and other statutory provisions. Therefore, there cannot be any orders/directions to implement the recovery certificate as prayed for by the petitioner.

37. In light of the above discussions of facts and law, and the status report filed by the respondent no. 1, this Court finds no merit in the instant petition and is not inclined to interfere in the implementation of the recovery certificate dated 7th August, 2023 arising out of the award dated 1st April, 2014 in ID No. 104/2012, under the extraordinary writ jurisdiction of this Court.

38. Accordingly, the present writ petition stands dismissed along-with pending applications, if any.

39. The Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 31, 2024
SV/RYP/AV

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 07.02.2024
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