(1966) 02 KL CK 0028

High Court Of Kerala

Case No: O.P. No. 400 of 1965

Sreedharan		APPELLANT
	Vs	
The Labour Court, Quilon and Others		RESPONDENT

Date of Decision: Feb. 8, 1966

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(a)(1), 2(g)(1), 25FF, 33(C)(1), 33(C)(2)

Citation: (1966) KLJ 783

Hon'ble Judges: V.P. Gopalan Nambiyar, J

Bench: Single Bench

Advocate: S. Easwara Iyer and L. Gopalakrishnan Potti, for the Appellant; T.C.N. Menon, K.R. Panicker, T.N. Hareendran and M.T. Kuriakose for Respondents 2 to 9 and Government Pleader for Respondent No. 10, for the Respondent

Final Decision: Dismissed

Judgement

V.P. Gopalan Nambiyar, J.

The petitioner was the highest bidder in the auction for vending toddy from shop No. 12 of Pullikada, Quilon for the three successive years 1960-61, 1961-62 and 1962-63. The period for which the petitioner purchased the right to vend toddy at the last of these occasions or the petitioner''s licence, as it is called expired 1.4.1963; and at the auction for the year 1963-64 the petitioner was not the successful bidder. Respondents 2 to 9 were toddy tappers employed for the purpose of collecting toddy from the trees comprised in the petitioner''s auction, and were getting wages at 18 nps. per bottle of toddy. They filed claim petitions 783 to 789 and 793 of 1963 before the Labour Court Quilon, claiming retrenchment compensation as well as notice pay, on the ground that they had been in continuous service for three years under the petitioner, and had been retrenched from service. Ext.P-1 is a copy of the claim petition No.783 of 1963; Ext.P-2 is a copy of the objection filed by the petitioner thereto; and Ex.P-3 is copy of the order of the Labour Court on the said petition. The Labour Court adjudged that the claimants were

entitled to retrenchment compensation but not to notice pay. This order of the Labour Court is sought to be quashed in this O.P. The petitioner"s counsel raised three points.

(1) that section 33 C(2) of the Industrial Disputes Act of 1947 is inapplicable to the case and the Labour Court had no jurisdiction to decide the controversy,

(2) That the petitioner was not the "Employer" of the claimants respondents, but that the Government, or the EXCISE Department thereof was their employer, and

(3) That the claimants - respondents had voluntarily quitted service under the petitioner long before the period of his auction expired on 1.4.1963 and had entered service under the new contractor who bid for 1963-64 and that therefore there was no retrenchment.

2. In addition to the above three points, the petitioner"s counsel attempted to argue that the claimants-respondents were not "workmen" within the meaning of the Act, and as expounded by the judicial decisions, as the petitioner had no control in regard to the manner and the method of their doing their work. As this point was not raised before the Labour Court, and as no foundation has been laid for it in the pleadings, and as the question involves investigation of facts, I must decline to pronounce upon this aspect of the question.

3. The 2nd and the 3rd of the contentions advanced by the counsel for the petitioner may be disposed of first.

4. The argument that the Government or the Excise Department thereof, and not the petitioner should be regarded as the employer must be repelled on the state of the authorities as they stand. Section 2 (g) (1) of the industrial Disputes Act reads:

employer" means--

(1) in relation to an industry carried on by or under the authority on any department of (the Central Government or a State Government) the authority prescribed in this behalf, where no authority is prescribed, the head of the department.

Section 10 of the Travancore Abkari Act 10 of 1073 provides inter alia that no toddy shall be drawn from any tree except under the authority and subject to the terms and conditions of a Licence granted by the Collector. Inter-relating language of the above two provisions, the petitioners counsel argued that the industry of toddy tapping was carried on by or under the authority of Government, and therefore the Government is the employer. In Carlsbad Mineral Water Mfg. Co. Ltd. Vs. P.K. Sarkar and Others, the question arose whether the Mineral water Manufacturing Company which had secured the rights of providing mineral Water on the East Indian Railway System, subject to the right of the Government to fix the price and to control the work of the company to some extent, was the "employer" with respect to the workmen employed under them; or whether the Government by reason of the contract entered into with the company for

providing amenities for railway passengers was to be regarded as the "employer" by or under whose authority the industry was carried on. Harries C.J. who delivered the judgment of the court expressed himself thus:

It seems to me that what is referred to in S.2(a)(1) and S.2(g)(1) is any industry owned by Government which is being carried on by Government itself either through a department or by some authority created by Government to carry on that industry. An industry carried on by or under the authority of Government is a Government industry which as I have said may be carried on directly by Government for that purpose. No business owned and carried on by a private person or a Limited company can be a business carried on by or under the authority of Government.

It was further observed:

If the business of manufacturing and supplying these mineral waters was carried on by authority of Government the Workmen would be the workmen of Government. But such obviously is not the case. In my judgment it is quite impossible to hold that the Carlsbad Mineral Water Manufacturing Company Limited is a business carried on by authority of Government. It is a business no owned by Government. But is on the other hand owned by the Carlsbad Mineral Water Manufacturing Company Limited. It is carried on their behalf and for their benefit and any control of Government only arises because of the terms of the contract which this company has entered into with Government a contract which gives them an exclusive right to sell certain articles on railway property.

The principle of the above decision was followed in Shri Sankara Allom Ltd. Trivandrum v. State of Travancore-Cochin (A.I.R. 1953 T.C.622) where it was ruled:

The provisions in the Central Excise and Salt Act of 1944 and the Central Excise Rules, 1944 are intended merely to carry out the fiscal and public policy of the State and not to convert the industry for which the licence is issued from a private concern into a Government business or a business carried under the authority of the Government. Nor can an over-all control given to the Central Government, over a class of industries in general on account of the fiscal policy of the State or on considerations of Public policy convert individual units of that industry, owned and worked by private persons or companies into Government concerns or industry carried on by or under the authority of the Central Government.

In a recent decision of this court in Indian Naval Canteen Control Board v. Industrial Tribunal, Ernakulam. (1965-II-L.L.J.366), it was pointed out that the conception of "any industry carried on by or under the authority of the Government" within the meaning of section 2(a)(1) of the Industrial Disputes Act, 1947, "involves a direct nexus with the industry through servants or agents." Such nexus is obviously absent in the present case. Following the principles laid down in the above decisions. I reject the second of the contentions urged by the counsel for the petitioner.

5. The contention that the claimants - respondents had voluntarily quilted service under the petitioner was sought to be rested on paragraphs 6 and 7 of Ex.P-2, a copy of the objections statement filed by the petitioner before the Labour Court. In my opinion they cannot form the foundation for a claim of abandonment of service under the petitioner by the claimants-respondent. There is no proof either, of any abandonment of service under the petitioner. The contention accordingly fails.

6. The most important submission of the counsel for the petitioner was the first point, namely, that the matter adjudicated did not fall within the province of section 33(C)(2) of the Industrial Disputes Act, and that the Labour Court had no jurisdiction. Clauses 1 and 2 of Section 33(C) of the Act as it stood at the relevant time may be extracted:

33(C)(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, the workman, 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.

(2) where any workmen is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act. be determined by such Labour Court as may be specified in this behalf by the appropriate Government and the amount so determined may be recovered as provided for in sub section (1).

The petitioner"s counsel argued that three claims are specifically comprehended u/s 33(c)(1), namely money due under (1) a settlement (2) an award and (3) under the provisions of Chapter VA of the Act. Contrasting the language of the section 33(c) (2), it was claimed that it could comprehend only "any benefit which is capable of being computed in terms of money". The argument proceeded that monetary benefits, were outside the purview of section 33 (c)(2) and that, in any view, money due under the provisions of Chapter VA Which was expressly covered by section 33 (C)(1) was outside the purview of section 33 (C)(2). In The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., the Supreme Court had occasion to examine the scope of the different clauses in section 33 (C). It was observed:

There is also no dispute that the word "benefit" used in S.33C(2) is not confined could be converted in terms of money, but that it takes in all kinds of benefits which may be monetary as well as nonmonetary if the workman is entitled to them, and in such a case, the workman is given the remedy of moving the appropriate labour court with a request that the said benefits be computed or calculated in terms of money. Once such computation or calculation is made under S.33C(2), the amount so determined has to be recovered as provided for in sub sec.(1). In other words, having provided for the determination of the amount due to the workman in cases falling under sub-section (2),

the legislature has clearly prescribed that for recovering the said amount, the workman has to revert to his remedy under sub-sec. (1).

It was not disputed before the Supreme Court that the word "benefit" in Section 33(C)(2) takes in all kinds of benefits both monetary as well as non-monetary. The question before the Supreme Court was whether Section 33 (C)(2) of the Act could be invoked even in cases where the right to the benefit itself was disputed, and not admitted. In holding that the clause was attracted even in such a case, the Supreme Court at p.96 of the L.L.J. report observed:

It is thus clear that claims made u/s 33(C)(1), by itself, can be only claims referable to the settlement, award, or the relevant provisions of Chap.VA. These words of limitation are not to be found in S.33(C)(2) and to that extent, the scope of S. 33 (C) (2) is undoubtedly wider than that of S.33 (C)(1). It is true that even in respect of the larger class of cases which fall under S. 33(C)(2), after the determination is made by the Labour Court the execution goes back again to L. 33 (C) (1). That is why S. 33 (C) (2) expressly provides that the amount so determined may be recovered as provided for in sub-sec.(1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under S.33(C)(2). There is no doubt that the three categories of claim mentioned in S.33(C)(1) fall under S.33 (C)(2) and in that sense, S. 33(C)(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chap. VA, may also be competent under S.33(C)(2) and that may illustrate its wider scope.....Thus, our conclusion is that the scope of S.33(C)(2) is wider than S.33(C)(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under S. 33(C)(2) which may not fall under S.33(C)(1).

(Underlining mine)

The words underlined above seem to me to clearly indicate that the subject-matter of clauses 1 and 2 of section 33(C) may well over-lap and are not mutually exclusive.

7. To the same effect is the ruling of the Madras High Court in South Arcot Electricity Distribution Company Ltd. v. Mohamed khan (1963 L.L.J.5), on appeal from the decision in 1959 L.L.J.624. The claim adjudicated therein u/s 33C(2) was u/s 25FF under Chapter VA of the Industrial Disputes Act. The Bombay High Court in Shree Amarsinhii Mills Ltd., v. Nagrashna (1961 L.L.J. 581) has also held that section 33C(2) of the Act is not in any way controlled by section 33C(1). It is ruled that the word "benefit" in section 33C(2) would include a claim for monetary benefits and a claim for lay off compensation under Chapter VA of the Act.

8. Neither on the language of clauses 1 and 2 of section 33C (1) nor on the State of the authorities, can I accept the argument of the counsel for the petitioner that the claim for

monetary benefits or a claim arising under Chapter VA of the Industrial Disputes Act is outside the purview of section 33C(2).

9. The petitioner''s counsel drew my attention to the amendment introduced to section 33C by the Amending Act 36 of 1964. After amendment, clauses I and 2 of section 33C read as follows:

33-C(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, 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.

Stress was laid on the striking difference in the phraseology and language of section 33C(2) as amended and it was claimed that these could only be indicative of a change in the scope and content of the clause as it stood prior to the amendment. I am unable to agree. The amendment might well be to clarify rather than to alter the law.

All the contentions urged by Counsel for the petitioner fail. The O.P. is dismissed; but in the circumstances without costs.