Pioneer Embroideries Ltd. Vs Prithvi Singh and Others

Letters Patent Appeal No. 89 of 2008

Court: Bombay High Court

Date of Decision: Dec. 11, 2008

Acts Referred:
Industrial Disputes Act, 1947 â€" Section 10(1), 2P, 33A, 33C, 33C(2)

Citation: (2009) 2 MhLj 701

Hon'ble Judges: Swatanter Kumar, C.J; S.A. Bobde, J

Bench: Division Bench

Advocate: C.U. Singh, instructed by Abhay Kulkarni and Associates, for the Appellant; Bhavna Shah, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, C.J.
The ambit and scope of the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947, hereinafter

referred to as the Act, is the only question that arises for consideration of the Court in this facts and circumstances of the present appeal. A number

of workmen of the Appellant Company filed a Petition u/s 33-C(2) of the Act before the Central Government Labour Court at Silvasa claiming

overtime wages for the period from 23rd August, 1998 to 29th March, 2003 approximately Rs. 2,03,768/- on assertions that they were workmen

of the Company for many years and had been working on for the said period. The Appellant-Company is an establishment to which the provisions

of the Factories Act and Industrial Disputes Act are applicable. Their normal working hours from 7.00 a.m. To 7.00 p.m. and from 7.00 p.m. To

7.00 a.m., i.e. 12 hours per day. Thus, they claimed overtime wages for working four hours every day except from the holidays, and therefore,

filed the Petition. They also claimed interest at the rate of 18% per annum per day. The claim of the Applicants was disputed by the Company. A

preliminary objection was raised that the application u/s 33-C(2) of the Act was not maintainable and was liable to be rejected as it was not based

on any pre-requisite rights. Thus, the Court has no jurisdiction to adjudicate the claim for overtime as the workmen must get their claim decided by

appropriate forum as condition precedent for invoking this provision, while on merits contending that the Company had continued with two tier

system. The Company further contended that as a result of settlement entered into between Gujarat Rajya Kamdar Sena u/s 2(P) read with

Section 81 of the Act and the workmen being signatory to the said settlement now cannot turn back to raise such claim contrary to the terms of the

settlement. The workmen were working for 8 hours as per law and no complaint has been raised for all this time and prayed that the application be

rejected.

2. From the record, it appears that vide order dated 26th September, 2006 the Labour Court had framed the following issues as regards to

jurisdiction and maintainability.

1. Whether claim is maintainable ?

2. Whether this Court has jurisdiction to entertain the plaint?

3. After framing the issues, the Labour Court vide its order dated 5th December, 2006 answered partially the issues in the affirmative and while

keeping the questions open, held as under:

11. Therefore, according to me unless evidence is recorded, unless parties get opportunity of hearing this Court straight away cannot confirm any

opinion about existence or non-existence of pre-existing right in the given circumstances, and facts of the case. Therefore, according to me at this

stage before recording of any evidence all the applications are maintainable and this Court has jurisdiction to proceed with the matters. Therefore, I

held findings of Issues No. 1 and 2 is affirmatives. The point for maintainability and jurisdiction is kept open for arguments at the final stage of the

matter.

4. Aggrieved by the said order, the Company filed Writ Petition in this Court. The learned Single Judge rejected the Petition summarily vide order

dated 14th January, 2008 giving rise to filing of the present Letters Patent Appeal. The contention raised on behalf of the Appellant before us is

that in terms of the provisions of Section 33-C(2) of the Act, the Labour Court has jurisdiction to entertain and decide the application which is in

the form of execution proceedings and it cannot enter upon and/or adjudicate other issues which are for establishment of the claim. It is only a

claim which has to be a determined or a settled claim, the computation of which or otherwise claimed in relation to which can be raised in an

application u/s 33-C(2) of the Act. As the very right of the workmen to receive overtime has been disputed, this controversy would fall beyond the

scope of the provisions of the Act. In support of the contentions, reliance has been placed on the judgments in Municipal Corporation of Delhi v.

Ganesh Razak and Anr. 1995 LLR 161, Gujarat Water Supply and Sewerage Board and Anr. v. Ketanbhai Dinkarray Pandya, Amroli 2003 III

CLR 316 and Tata Consulting Engineers & Associates Staff Union v. Tata Consulting Engineers and Ors. 1996 I CLR 1038 (Bom.D.B.).

5. It is also contended that the learned Single Judge has recorded the finding on the issue of maintainability while the same was kept open by the

Labour Court in its order dated 5th December, 2006. The Learned Single Judge thus has even varied the order of the Labour Court while there

was no challenge by the workmen to the said order. The finding that the claim of overtime wages is recognised under the Factories Act and

therefore, it cannot be said that the application for claiming recovery of overtime wages made by the workmen is not maintainable and as such held

that the application was maintainable. This finding is contrary to law and error on the face of record. While making this argument, learned Counsel

appearing for the Respondents relied upon the judgments in The The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., and Namer Ali

Choudhury and Others Vs. The Central Inland Water Transport Corporation Ltd. and Another, and primarily relied upon a decision in the case of

The Central Bank of India Ltd."s (supra), Constitutional Bench, that the scope of Section 33-C(2) is not limited and can be gone into by the

Labour Court in exercise of its jurisdiction u/s 33-C(2) of the Act. It is also argued that the labour Court has to finally decide the matter but the

findings indicated by the learned Single Judge in the impugned order are correct and are in accordance with law. The various judgments relied

upon by the learned Counsel appearing for the respective parties, the principle of law is commonly stated in all these judgments except to the

extent in the facts of a given case, the Court has held that remedy u/s 33-C(2) would be maintainable while in some other cases it has been held

that such application was beyond the scope of the said provisions. In the case of Municipal Corporation of Delhi (supra), the Supreme Court took

the view that the claim for equal pay for equal work being not a pre-adjudicated matter for claim for such workmen was beyond the scope of

provisions of Section 33-C(2). The learned Counsel appearing for the Company while making special reference to the observations of the

Supreme Court in Union of India and Anr. v. Kankuben (Dead) by Lrs and Ors. 2006 LLR 494 (SC) and D. Krishnan and Another Vs. Special

Officer, Vellore Co-operative Sugar Mill and Another, , argued that the claim of overtime for which slips are required to be issued in accordance

with the provisions of T.N. Factories Rules, 1950. The Supreme Court had taken the view that these were disputed facts and the case for

invocation of Section 33-C(2) was not made out. In the case of Municipal Corporation of Delhi (supra), the Supreme Court had also noticed

earlier judgment of the Supreme Court including the Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, . Thus, the

consistent view was that where the claim is not based on a prior adjudication made, in the Writ Petition filed by the workmen, remedy under

summary procedure was not invocable.

6. We have already noticed that the proceedings u/s 33-C(2) of the Act are a kind of summary proceedings, equitable to execution proceedings

and like an Executing Court, the Labour Court can neither go behind the order determining the claim nor can it determine controversies, if raised,

with regard to existence of a right to receive any benefit as the claim has to be pre-determined or based upon an award or a settlement or any

other determinative document. In some other cases, the Supreme Court and some Benches of this Court have taken a view that even certain larger

questions can be gone into by the Labour Court. In the case of Namor Ali Choudhury (supra), the Supreme Court formulated questions in

paragraph 4 of the judgment including where there is any settlement or award as alleged and what amount the workmen were entitled to receive if

any and rate and quantum of such amount. A dispute as to all such questions or any of them attract the provisions of u/s 33-C(2) of the Act. It will

be useful to refer to dictum laid down by the Constitutional Bench of the Supreme Court in The Central Bank of India Ltd.''s case (Supra), which

reads as under:

15. The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of

industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to

enforce their existing individual rights, and so, inserted Section 33-A in the Act in 1950 and added Section 33-C in 1956. These two provisions

illustrate the cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without

having to depend upon their Union to espouse their cause. Therefore, in construing Section 33C we have to bear in mind two relevant

considerations. The construction should not be so broad as to bring within the scope of Section 33C cases which would fall u/s 10(1). Where

industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the

Act, as for instance, by reference u/s 10(1). These disputes cannot be brought within the purview of Section 33C. Similarly, having regard to the

fact that the policy of the Legislature in enacting Section 33C is to provide a speedy remedy to the individual workmen to enforce or execute their

existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by

individual workmen. In other words, though in determining the scope of Section 33C we must take care not to exclude cases which legitimately fall

within its purview, we must also bear in mind that cases which fall u/s 10(1) of the Act for instance, cannot be brought within the scope of Section

34C.

16. Let us then revert to the words used in Section 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable

construction. When Sub-section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he

must be a workman whose right to receive the said benefit is not disputed by the employer ? According to the appellant, the scope of Sub-section

(2) is similar to that of Sub-section (1) and it is pointed out that just as under Sub-section (1) any disputed question about the workmen''s right to

receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under Sub-section (2) if a dispute is raised

about the workmen''s right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour

Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion,

on a fair and reasonable construction of Sub-section (2) it is clear that if a workman''s right to receive the benefit is disputed, that may have to be

determined by the Labour Court. Before proceeding to compute the benefit in terms of money, the Labour Court inevitably has to deal with the

question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the

Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with

that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this

point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of Sub-

section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause ""Where any

workman is entitled to receive from the employer any benefit"" does not mean ""where such workman is admittedly, or admitted to be, entitled to

receive such benefit"". The appellant''s construction would necessarily introduce the addition of the words ""admittedly, or admitted to be"" in that

clause, and that clearly is not permissible. Besides, it seems to us that if the appellant''s construction is accepted, it would necessarily mean that it

would be at the option of the employer to allow the workman to avail himself of the remedy provided by Sub-section (2), because he has merely

to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain

the workman''s application. The claim u/s 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of

money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to

the main determination which has been assigned to the Labour Court by Sub-section (2). As Maxwell has observed ""where an Act confers a

jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution"". We

must accordingly hold that Section 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled

should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers.

Incidentally, it may be relevant to add that it would be somewhat odd that under Sub-section (3), the Labour Court should have been authorised to

delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task

assigned to the Labour Court under Sub-section (2). On the other hand, Sub-section (3) becomes intelligible if it is held that what can be assigned

to the Commissioner includes only a part of the assignment of the Labour Court under Sub-section (2).

17. It is, however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily

have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction u/s 33C(2), because interpretation of

awards or settlements has been specifically and expressly provided for by Section 36A. We have already noticed that Section 36A has also been

added by the Amending Act No. 36 of 1956 along with Section 33C, and the appellant''s argument is that the legislature introduced the two

sections together and thereby indicated that questions of interpretation fall within Section 36A and, therefore, outside Section 33C(2). There is no

force in this contention. Section 36A merely provides for the interpretation of any provision of an award or settlement, and the appropriate

Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where

the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that Section 36A can be

invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or

settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved

and that remedy is now provided by Section 36A. But the scope of Section 36A is different from the scope of Section 33C(2), because Section

36A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of Section 33C(2). Whereas

Section 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36A deals merely with a

question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate

Government is satisfied that the dispute deserves to be resolved by reference u/s 36A.

7. As is evident from the above stated principles that the jurisdiction of the Labour Court is not so limited or narrow so as to dismiss the

application filed by the workmen at the threshold itself. Besides, if some ancillary questions are to be dealt with and/or decided by the Labour

Court, determination or adjudication of a right itself may not squarely fall within the scope of these provisions. But, certainly, like in the present

case, where the workmen, while relying upon the provisions of the Factories Act and even partial admission of the Company that the workmen

were working 8 hours as per law and the Labour Court leaving the questions open till the parties have been given opportunity to lead evidence and

prove their case and deferring the findings can hardly be faulted with. We must notice that it is not in dispute that the workmen would be entitled to

receive overtime wages provided they show that they have worked in excess of 8 hours. So in other words, the right to claim overtime can hardly

be a subject matter of dispute in the facts and circumstances of the present case provided the workmen establish their claim. This is not a case

where the Court should accept preliminary objection to the extent of declining to exercise its jurisdiction and reject the application u/s 33-C(2) of

the Act at the very threshold thus shutting the doors of justice for the workmen. We are in agreement with the learned Counsel appearing for the

Appellant that the learned Single Judge could not have recorded finding as regards to the maintainability of the application particularly when the

Labour Court has kept the questions open and required them to lead evidence. We are of the view that the order of the Labour Court does not

suffer from error of law and is in consonance with the settled principles of Industrial Jurisprudence.

8. For these reasons, we find no merit in the present Appeal, and the same is dismissed, however, we direct that the Labour Court, as per its order

dated 5th December, 2006, to decide the issues finally and that too without being influenced by any observation of the Court either made in this

order or by the learned Single Judge in the order dated 14th January, 2008 impugned in the present Appeal. No order as to costs.