

(2010) 06 CAL CK 0009**Calcutta High Court****Case No:** W.J.A. Side W.P. No. 8698 of 2009 (W)

Price Water House Coopers Pvt.
Ltd.

APPELLANT

Vs

Second Labour Court and Others

RESPONDENT**Date of Decision:** June 12, 2010**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33C(2)

Citation: (2010) 126 FLR 378 : (2010) 4 LLJ 716**Hon'ble Judges:** Dipankar Datta, J**Bench:** Single Bench**Advocate:** P.S. Sengupta and Debasish Kundu, for the Appellant; R.N. Majumdar and N. Rakshit, for the Respondent**Final Decision:** Dismissed

Judgement

Dipankar Datta, J.

Challenge in this petition is to an ex parte award dated July 17, 2003 sassed by the Judge, Second Labour Court (Annexure P-3) and the order dated September 18, 2003 passed by the selfsame Judge (Annexure P-5). By the award, the Judge directed reinstatement of the third Respondent in service of the Petitioner and to pay him full back-wages within 60 days from date of receipt thereof. By the order dated September 18, 2003, the petition filed by the Petitioner praying for setting aside of the ex parte award was rejected on contest.

2. It is not in dispute that the third Respondent has since approached the Labour Court for computation of benefits u/s 33C(2) of the Industrial Disputes Act, 1947 since the Petitioner did not implement the award, giving rise to Computation Case No. 6/2004. It is also not in dispute that while contesting the said case, the Petitioner has raised the point that the award dated July 17, 2003 is a nullity. The Labour Court is in seisin of the issue.

3. More than 5-1/2 years have elapsed since the award was passed by the Labour Court and the application filed by the Petitioner for setting it aside was rejected. This petition has been presented only on May 6, 2009. The explanation that has been furnished by the Petitioner for the delay in approaching the Court of Writ is contained in paragraph 33 of the writ petition.

4. According to the Petitioner, it is on the basis of the opinion of a senior lawyer consulted by it that it was advised to assail the award on the grounds urged in the petition without waiting for a decision by the Labour Court.

5. This Court finds no reason to entertain the writ petition at this stage. The Petitioner may well afford the luxury of consulting a senior lawyer any time it wishes. There cannot be any embargo so far as obtaining legal opinion is concerned but that is no ground to justify the delay in moving this petition against an award/order passed in July/September, 2003. In the exercise of discretionary writ powers, delay is a vital factor that the Court must bear in mind. The Petitioner has been contesting the proceedings u/s 33C(2) of the Act by engaging a lawyer. The point of nullity has been raised as a defence. There is no lack of wise counsel. The Petitioner says that it consulted a senior lawyer more than 5-1/2 years after the impugned award/order was passed. Even if the cause for moving this petition at such belated stage is to be believed, to the mind of this Court, it is not a satisfactory explanation for the delay. Why the Petitioner did not consult any senior lawyer earlier has not been explained. Most certainly, financial resources were not scarce to act as an impediment to obtain proper legal opinion. If this petition were entertained, that would really wreck the morale of the third Respondent who has been vigilant enough to pursue the remedy available to him in law for enforcement of his right before the appropriate forum at the proper time. The decision in *Moon Mills Ltd. v. M.R. Meher, President, Industrial Court, Bombay AIR 1967 SC 1450: 1967 II LLJ 34* relied on by Mr. Sengupta, learned Counsel for the Petitioner lends no assistance to its cause. Belated receipt of legal advice has not been, recognized therein as a good ground for condoning delay.

6. That apart, the Petitioner admittedly has raised the point before the Labour Court that the impugned award is a nullity and it cannot be enforced. It is therefore evident that the Petitioner by filing the present petition has sought to pursue parallel remedy. That it is not permissible as settled law.

7. This Court is disinclined to exercise writ powers on this petition. It stands dismissed.

8. No opinion is expressed on merits of the Petitioner's claim. It shall be open to it to raise all points that are available to it in law before the Labour Court.

9. The Labour Court is encouraged to expedite Computation Case No. 6/2004 pending before it according to law.

There shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied to be furnished to the applicant within 4 days from date of putting in requisites therefore.