

State of West Bengal Vs Aspiring Engineers and Exporters Pvt. Ltd. and Others

Court: Calcutta High Court

Date of Decision: Oct. 5, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 340, 4, 421, 482, 6
Industrial Disputes Act, 1947 â€” Section 33C, 33C(1), 33C(2)

Citation: (2008) 2 ALT(Cri) 15 : (2008) 1 CHN 165

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: Swapan Kumar Mallick, for the Appellant; Amit Bhattacharjee, Ayan Bhattacharjee and Indrajit Adhikari for Opposite Party No. 2 and Pradip Kumar Roy, for Opposite Party No. 3, for the Respondent

Judgement

S.P. Talukdar, J.

An award under the Industrial Disputes Act was made as far back as in 1994. It was against a company, M/s Aspiring Engineers and Exporters Pvt. Ltd. About a decade and half have passed since passing of the said award and without absolutely no progress so far.

It has been althrough a wild goose chase. The controversy of course was, for reasons or without, allowed to change the complexion from time to

time. In the process, the helpless workers wasted their valuable time and waited in agony.

2. The present application u/s 482 of the Code of Criminal Procedure is directed against an order dated 11th July, 2002 passed by the learned

City Sessions Court, Calcutta, in Criminal Revision No. 3 of 2001. By the said order, the learned Court of Revision set aside the order of the

learned Magistrate being the order dated 19th July, 2000 passed in connection with Misc. Case No. 44 of 1998. All this was in connection with a

proceeding u/s 33C(2) of the Industrial Disputes Act, 1947.

3. Section 33C of the Industrial Disputes Act, 1947 deals with ""recovery of money due from an employer"". By the amendment of Sub-section (1)

of Section 33C of the said Act, the words ""to the Collector who shall proceed to recover the same in the same manner as an arrear of land

revenue"", the words ""to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall proceed to realize the money

as if it were a fine imposed by such Magistrate"" were substituted. That is how the matter reached the learned Court of Magistrate.

4. After hearing Mr. Mallick appearing as Learned Counsel for the petitioner/State of West Bengal, Mr. Roy, Learned Counsel, appearing on

behalf of the opposite party No. 3 and representing the workers of the said company as well as Mr. Bhattacharjee, Learned Counsel, appearing

for opposite party No. 2 and on perusal of the relevant materials, it appears that such an award for an amount of Rs. 4 (four) lakhs and odd was

placed before the learned Chief Metropolitan Magistrate, Calcutta for execution. Thereafter, another round of litigation was started. The present

opposite party No. 2 was sought to be impleaded/added in connection with the said execution proceeding. This was on the ground that such

opposite party No. 2 at the relevant time was Managing Director of the company and as such, was directly responsible for the day-today

functioning of the company.

5. To this, the opposite party No. 2 pleaded before the learned Court of Magistrate that he tendered resignation before such controversy cropped

up and before such an award was made. Opposite party No. 2 taking that plea wanted to wash his hands of. The present petitioner/State of West

Bengal as well as opposite party No. 3 being naturally anxious about the aforesaid stand of opposite party No. 2 sought to establish before the

learned Court that the resignation even if tendered was not accepted nor any Form 32 as per the Companies Act could be placed before the

learned Court. In fact, Mr. Roy has gone a step further by producing a copy of the written statement filed by the opposite party No. 2 before the

learned Tribunal whereby he sought to present the company in 1994. Referring to the same, Mr. Roy has categorically contended that such

opposite party No. 2 has literally practised fraud upon the Court and as such, submitted that proceeding u/s 340 of the Code of Criminal

Procedure is required to be initiated against such opposite party No. 2.

6. Mr. Bhattacharjee representing such opposite party No. 2 submits that it is of little consequence that his resignation is still pending for

acceptance or not. It is enough that he tendered his resignation in 1994. This, however, does not explain as to what prompted him to represent the

company and file a statement on its behalf in July, 1994.

7. This issue is naturally left open and it does not certainly by any means take away the right of the present opposite party No. 3 to initiate a

complaint before the appropriate forum in that regard. It may, however, be mentioned that this Court is not called upon to adjudicate that aspect

within the scope and ambit of the present application.

8. The question arises as to how an award passed against a company can be properly and effectively executed. Since the award is against the

company itself, Section 33C of the ID. Act and amendment thereto, as referred to earlier, make the situation quite simple. It is for the learned

Court of Chief Metropolitan Magistrate to proceed for recovery of the awarded amount and if such recovery is not made possible, the learned

Court may very well proceed in the manner as is done for realisation of fine. Section 421 of the Code of Criminal Procedure very well takes care

of the situation. It matters little whether the present opposite party No. 2 continues to represent the offender company or not. After all, Director

may come and go, the company exists and so its liability for payment of the awarded amount. It is not understood as to what prompted the present

petitioner or opposite party No. 3 to implead or add opposite party No. 2 in such an execution proceeding.

9. Having regard to the fact that there has been inordinate delay, which puts our administration of justice to shame, the anxiety of the opposite

party No. 3, can be well appreciated. But it is not desirable on the part of either of the present petitioner or the opposite party No. 3 to miss the

wood for the trees.

10. Question has been raised by Mr. Bhattacharjee as to whether the learned C.M.M. was justified in transferring the matter to the learned 16th

Court of Metropolitan Magistrate. According to him, the amending provision as referred to specifically mention about the Chief Judicial Magistrate

or the Chief Metropolitan Magistrate and there is little scope of any other Magistrate to do or act on their behalf so far the said amendment is

concerned.

11. Having regard to the fact that the Chief Metropolitan Magistrate or the Chief Judicial Magistrate are placed in the categories of the Courts of

Magistrate u/s 6 of the Code, this Court is not inclined to give such a literal meaning and adopt a technical approach. Section 6 of the Code of

Criminal Procedure only speaks about three categories of Magistrates i.e. the Judicial Magistrate of the first class and Metropolitan Magistrate,

Executive Magistrate and the Judicial Magistrate of the second class.

12. The aforesaid Section 4 of the Code of Criminal Procedure permits this Court to hold that though there is no mention of any other Magistrate

in such amended Sub-section (1) of Section 33C of the I.D. Act, there had been no technical error in making over the case to the learned 16th

Court of M.M. by learned C.M.M., Calcutta.

13. The fact remains that Industrial Disputes Act is a social legislation and while interpreting the same, the Court should not be hyper-technical and

it does not demand dotting of every "i" and cutting of every "t". But to avoid the possibility of any future controversy and in view of the order

which this Court now propose to pass, the further proceeding with the said award be shifted back to the learned Court of C.M.M.. Calcutta.

14. So far Section 33C of the I.D. Act is concerned, by no stretch of imagination, it can be said that it contemplates any personal liability of the

Managing Director or any of the Directors of the company. The liability to satisfy the award for all practical as well as legal purposes continues to

remain with the company irrespective of who represent the same. There was absolutely no justification for impleading the present opposite party

No. 2 in connection with the said execution proceeding. This Court appreciates the stand taken by the learned Metropolitan Magistrate as well as

the concerned for effective execution of the award but this does not justify taking of a route, which is not permissible in law nor serve any fruitful

purpose.

15. After giving due regard to the order which was passed by the learned Court of Revision, it appears that initial misconception persists and the

learned Court of Revision also dealt with the matter entirely from a different angle and in a wrong perspective. In view of the approach taken by

this Court, any further discussion regarding the merits of the order passed by the learned Court of Revision as well as learned Court of Magistrate

does not seem to be necessary.

16. This Court certainly appreciates the anxiety as ventilated by Mr. Mallick or Mr. Roy on behalf of the opposite party No. 3. The reference to

the various judgments passed by the Apex Court either in specific cases or in response to Public Interest Litigation certainly continue to guide and

focus the miseries of the poor and helpless. It was said that law grinds the poor and rich men rule the law. The said proposition tends to be

applicable even in present life. But that does not necessarily justify any sort of means and while administering justice, the correct procedure is

required to be adopted. When the liability in respect of a certain matter rests exclusively with the Company, it will certainly not justify to chase

another person who at one point of time represented the company.

17. Considering all these aspects and in the best interest of justice, the present application is disposed of with the following observations:

The impugned order passed by the learned Court of Revision being the order dated 11.07.2002 as well as the order passed by the learned

Metropolitan Magistrate being the order dated 19.07.2000 be set aside.

18. The execution proceeding under reference is hereby sent back to the learned Court of Chief Metropolitan Magistrate, Calcutta. This is done in

exercise of this Court's power u/s 482 of the Code of Criminal Procedure and in order to secure the ends of justice as well as to prevent further

abuse of the process of law.

19. The learned C.M.M. on receipt of the relevant record will proceed to execute the award against the company. In case, the said amount cannot

be satisfied by the company, the learned Court will proceed in accordance with Section 421 of the Code of Criminal Procedure.

20. It is expected that the entire execution proceeding should be so dealt with that it can be disposed of positively within a period of three months

from the date of communication of this order.

21. This disposes of C.R.R. No. 473 of 2003.

Let a xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court), be handed over to the Learned Counsel for the parties

on usual undertaking.