(2011) 04 DEL CK 0320

Delhi High Court

Case No: Writ Petition (C) 7038 and 7039 of 2009 and CM No"s. 2494 and 2496 of 2009 (for stay)

Sohan Puri		APPELLANT
	Vs	
Labour Commissioner and Another		RESPONDENT

Date of Decision: April 29, 2011

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Rajal Rai Dua, for the Appellant; Sumil Kumar, for R-2, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The petitions seek quashing of the Recovery Certificates, dated 20th February, 2007 in W.P.(C) No. 7038/2009 and dated 4th May, 2006 in W.P.(C) No. 7039/2009 issued by the Additional Labour Commissioner of the Govt. of NCT of Delhi on the application of the Respondent No. 2 in each case, for recovery of Rs. 1,76,703 in W.P.(C) No. 7038/2009 and Rs. 85,907/- in W.P.(C) No. 7039/2009.

2. The Respondent No. 2 was employed with one M/s Genius Industries, B-97/3, Naraina Industrial Area, Phase-I, New Delhi. Disputes which had arisen between the Respondent No. 2 in each case and the said M/s Genius Industries were referred for adjudication to the Industrial Adjudicator. The Industrial Adjudicator vide award dated 5th February, 2005 in W.P.(C) No. 7038/2009 and 31st August, 2002 in W.P.(C) No. 7039/2009 directed the said M/s Genius Industries to reinstate the Respondent No. 2 in each case into service with full back wages. The Respondent No. 2 applied for implementation of the said awards.

3. It appears that the Respondent No. 2 in each case filed an affidavit before the Labour Commissioner to the effect that the management of M/s Genius Industries had shifted business and started work in the name and style of M/s Satyam Cable Industries at plot No. 397, Phase-II, Sector-37, Gurgaon, Haryana. The counsel for the Petitioner Mr.

Sohan Puri who claims to be the proprietor of M/s Satyam Cable Industries has stated that no notice of the proceedings before the Labour Commissioner was issued to the Petitioner / M/s Satyam Cable Industries. Be that as it may, the Labour Commissioner on the basis of the said affidavit of the Respondent No. 2 in each case issued the Recovery Certificate for the amount due under the said awards against the said M/s Satyam Cable Industries

4. When the Recovery Certificates were sought to be executed against the Petitioner / M/s Satyam Cable Industries, the present writ petitions were filed.

5. Notice of the petitions was issued and the execution of the Recovery Certificates stayed.

6. It is the case of the Petitioner that business in the name and style of M/s Genius Industries was being carried on by his brothers and he had no concern with the same. The Petitioner claims that he has since long been carrying on business in Guwahati (Assam) in the name of M/s Satyam Electronics Corporation and thereafter in Gurgaon in the name of Satyam Cable Industries and the Petitioner or the said M/s Satyam Cable Industries has got nothing to do with M/s Genius Industries and the affidavit filed by the Respondent No. 2 workman in each case before the Labour Commissioner, on the basis whereof the Recovery Certificates were issued are false.

7. The Respondent No. 2 in each case in their affidavits have refuted the aforesaid contentions of the Petitioner and have stated that the Petitioner along with his brothers was carrying on the business in the name of M/s Genius Industries and the business in the name of M/s Satyam Electronics Corporation at Guwahati (Assam) was none other than of the sale of the goods manufactured / produced by the said M/s Genius Industries.

8 The Petitioner has not filed any rejoinder to the aforesaid counter affidavits of the Respondents No. 2. The counsel for the Petitioner states that no rejoinder is needed because the Respondents No. 2 have not placed anything to show the involvement of the Petitioner in the business of M/s Genius Industries.

9. In the present case, it is not as if M/s Genius Industries is a stranger to the Petitioner. The Petitioner also admits that the business in the name and style of M/s Genius Industries was being carried on by his brothers. Workmen such as Respondents No. 2 are not expected to know the complete details of the constitution of the said M/s Genius Industries and it is for the Petitioner to produce all the materials/documents to show as to what was the constitution of M/s Genius Industries and if the business in the name of M/s Genius Industries was being carried on by his brother and to also furnish the whereabouts/particulars and the business now being carried on by his brother/s. The counsel for the Petitioner states that the Petitioner is willing to furnish all the said details/particulars. It is significant that the Petitioner has not chosen to file rejoinder to the averment in the counter affidavits of the Respondents No. 2 of the business of M/s

Satyam Electronics Corporation stated to have been renamed as M/s Satyam Cable Industries being of sale of goods produced by M/s Genius Industries.

10. The same indicates that the Petitioner is not disputing the said fact.

11. It is also significant that it is nowhere the case of the Petitioner that there are any disputes and animosity between him and his brother.

12. It is felt that the appropriate remedy of the Petitioner was to approach the Labour Commissioner but the Petitioner instead chose to obtain stay of the Recovery Certificates and owing whereto the implementation of the award has been held up unnecessarily for the last over two years.

13. However, it is not deemed expedient to conduct enquiry on the aforesaid aspects in the present jurisdiction. It is appropriate that the Petitioner discloses all the material in his power and possession including the whereabouts / particulars of his brother/s who is/are stated to have been carrying on business in the name of M/s Genius Industries before the Labour Commissioner and the Labour Commissioner on the basis of the material produced adjudicates as to against whom and in what manner awards are to be executed.

14. The petitions are therefore disposed of by directing the parties to appear before the Labour Commissioner who had issued the Recovery Certificates on 18th May, 2011. The Labour Commissioner is directed to enquire into the matter including on all the aforesaid aspect. Since sufficient time has already lapsed, the Labour Commissioner is further directed to complete the inquiry on or before 31st July 2011. Till then the execution of the Recovery Certificates shall remain stayed. If the Labour Commissioner upon the said enquiry finds that the awards are to be executed against the Petitioner also, the Petitioner through counsel undertakes to this Court to make the payment within 45 days of such finding subject to orders in challenge if any by the Petitioner to the said finding. However, if it is found that the awards are not executable against the Petitioner, the Labour Commissioner shall withdraw the Recovery Certificates issued against Petitioner and shall proceed to implement the awards against the persons liable thereunder.

15. The petitions are disposed of. The Petitioner to also pay costs of these proceedings of Rs. 7,500/- to each of the Respondent workman before the Labour Commissioner on the next date of hearing. The Petitioner, if entitled to, will have liberty to recover the said costs from his brother/s.