Supreme Court of India
M/S. Agencia E. Sequeira M/S. ... vs Labour Commissioner & Others on 31 January, 1997
Author: D Anand
Bench: A.S. Anand, S.B. Majmudar

PETITIONER:
M/S. AGENCIA E. SEQUEIRA M/S. FABRIL GASOSA

Vs.

RESPONDENT:
LABOUR COMMISSIONER & OTHERS

DATE OF JUDGMENT: 31/01/1997

BENCH:
A.S. ANAND, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 565 OF 1997 (Arising out of SLP (C) NO. 23763 OF 1995) J U D G M E N T DR. ANAND, J.

Leave granted in both special leave petitions. The appellants are sister concerns. Their Letters Patent Appeals were disposed of by a common judgment and order dated 19.6.1995 upholding the judgment and order passed by the learned Single Judge on 18.7.1994 dismissing the Writ Petitions filled by the appellants. These appeals are directed against the common judgment and order dated 19.6.1995.

On 9th of December, 1986 a settlement was arrived at between the appellants and the employees union relating to service conditions of the workmen for the period 1.1.86 to 30.6.88. The settlement inter alia provided that VDA (variable dearness allowance) shall be paid at Rs. 2/- per point of rise per month beyond AICPI 450 and the wages of the employees were linked with the VDA. The employees union issued a notice of its intention to terminate the settlement with a view to submit a fresh charter of demands on 1.7.88. A fresh charter of demands was submitted by the employees union demanding an increase in the salary etc. on 17.7.88 but it was mentioned therein that the service conditions in force would continue to remain unchanged unless specifically agreed to otherwise. The employees union did not seek any change in the charter of demands in so far as the

rate of VDA was concerned. No fresh settlement appears to have been arrived at between the parties but the appellants relying upon the notice of termination and the new charter of demands, unilaterlly freezed VDA with effect from 4.8.88. Negotiations between the employees union and the appellant, did not, however, produce any fresh settlement. The employees union (respondent No. 3) issued a demand notice to the employer on 21.1.91 demanding VDA with effect from 1.7.88. It was claimed that the unilateral freezing of the VDA was illegal and that the obligations in the settlement dated 9.12.1986 were in force and binding on the parties. The employees union, it appears apart from filling an application before the authorities under the payment of Wages Act alleging illegal deduction from wages, also approached the State Government for issuance of the recovery certificate for the arrears of VDA. The Labour Commissioner, on behalf of the State Government, issued a notice to the appellants on the application filed by the employees union with regard to the payment of VDA on 14.5.91. The appellants were required by the Labour Commissioner to reply to the claims of the respondent union. The appellants were required by the Labour Commissioner to reply to the claims of the respondent union. The appellants took the stand in their reply that the settlement of 1986 stood terminated and referred to the letter of the employees union dated 1.7.88 conveying their intention to terminate the settlement and the fresh charter of demands. The appellants further resisted the claim of the union inter-alia by taking the plea that there was an oral agreement arrived at between the parties to freeze the VDA at June, 1988 point and therefore the claim of the employees union was untenable. The appellants, however, produced no evidence in support of its plea of oral agreement. The Labour Commissioner found that no oral agreement had been proved and that obligation of the employer to pay the VDA under the 1986 continued to be in force and with a view to ensure implementation of the settlement, a notice of demand was issued to the appellants by the Labour Commissioner for payment to the VDA to the workmen for the period 1.7.88 to 28.2.91. An order for payment of Rs. 2,14,990.30 P. towards the VDA for the period 1.3.91 to 30.9.91 was also issued. Coercive process for recovery of Rs. 5,29,720/- as arrears of VDA between 1.7.88 and 28.2.91 was initiated.

The appellant filed writ petitions No. 37 and 38 of 1994 in the High Court of Bombay challenging the notices dated 13.9.91 and 27.12.91 and certain other notices and proceedings taken by the Labour Commissioner in connection with the claim of the workmen regarding payment of VDA. The main Plea raised by the appellants in the writ petitions was that the settlement dated 9.12.86 was time bound till 30th June, 1988 and since it was sought to be terminated by the Union through their notice dated 1.7.88, the employees union could not maintain any application 33C (1) of the Act. Besides, an oral agreement between the parties which had varied the terms of the settlement particularly to freeze the VDA after the expiry of the time bound settlement dated 9.12.86 was also pleaded and it was canvassed that the employees union could take recourse to seeking a reference under Section 10(1) of the Act or to file an application Sec.(2) of the Act ut not to the provisions of Section 33C (1) of the Act. It was asserted that a settlement arrived at under the provisions of the Industrial Disputes Act ceased to be a settlement as defined under the Act, on its termination and turns itself into a mere contract between the parties and, therefore, on termination of such settlement, the rights recognised by the settlement cannot be enforced in the manner prescribed under Section 33C(1) of the Act but only as contractual obligations. The learned Single Judge rejected the plea that there had been an oral agreement between the parties which had in turn varied the terms of the settlement of 1986 were subsisting between the parties inspite of the time bound

settlement and as such no fault could be found with the exercise of jurisdiction by the Labour Commissioner under Section 33C (1) of the Act. The Learned Single Judge also rejected the argument that in the facts and circumstances of the case, the employees union could only prefer a claim either under Section 33C (2) of the Act or seek a reference under Section 10(1) of the Act for recovery of the arrears of VDA. It was held that the application filed by the employees union under Section 33C(1) was maintainable and the obligations flowing from the settlement regarding payment of VDA could be enforced under the provisions of Section 33C (1) of the Act and that those obligations flowing from the 1986 settlement were not contractual in nature. The writ petitions were accordingly dismissed on 18.7.1994. The Letter Patent Appeals also failed since the Division Bench also found that there had been no oral agreement varying the terms of the 1986 settlement and that with the expiry of the period of time bound settlement, the obligations under the settlement did not cease and went on to opine that with the expiry of the period of settlement, only a stage was set for fresh negotiations to take place and till the settlement of 1986 was superseded by a fresh settlement, the obligations flowing from the settlement of 1986 were binding on the parties and were enforceable under Section 33C (1) of the Act.

In these appeals by special leave, learned counsel for the appellants has once again canvassed the same grounds which had been unsuccessfully raised before the learned single Judge and the Division Bench. Learned counsel in support of the assertions that the terms of the settlement stood varied by an oral agreement and could not be enforced as terms of the settlement but only as a contract, laid emphasis on the fact that for over two years the workmen had not demanded payment of the VDA after it was freezed with effect from 1.7.88 and their silence went to establish the existence of an oral agreement as alleged by the appellants. Plea regarding the non-maintainability of the petition under Section 33C (1) of the Act was also reiterated on the same grounds which were canvassed in the High Court.

Learned counsel for the respondents on the other hand countered these submission by urging that on facts no oral settlement at all had been arrived at between the parties and that the Labour Commissioner as well as the High Court had rightly found that there was no oral settlement, which had superseded the terms of the earlier settlement. With regard to the maintainability of the application under Section 33C (1) of the Act, learned counsel for the respondents submitted that verification of the claim of money which stood determined under the 1986 settlement squarely falls within the scope of Section 33C (1) of the Act and therefore it was not obligatory on the part of the employees union to file any proceedings either under Section 10(1) or Section 33C (2) of the Act.

For what follows, we have not been persuaded to take a view different than the one taken by the Labour Commissioner and the High Court.

The Labour Commissioner, on the basis of the material on the record found that there had been no oral understanding or agreement superseding the 1986 settlement and therefore the obligations under the old settlement, even after the expiry of the period of its operation, would continue in force till fresh negotiations take place and a new settlement is arrived at. The learned Single Judge agreed with the Labour Commissioner and observed:-

> " In the facts and circumstances of the case I am inclined to hold that the so called oral understanding whereby the workmen are purported to have given up or deferred their right to be paid VDA in exchange for some extra benefits till the finalisation of another settlement in place of the terminated one is ex-facie bad and apparently without any authority of law which nowhere provides for this type of oral agreements as valid and legally sufficient to modify the terms and conditions of a contract which is deemed to operate and subsist consequent upon the termination of the old settlement."

The learned Single Judge also examined the effect of the letter of the employees union dated 1.7.88 and held that the terms and conditions of the settlement of 1986 were subsisting and the right of the workmen to receive VDA was not effected in any manner. Dealing with the submission of the appellants, that the silence of the workmen to claim VDA till 1991, was indicative of the fact that the parties had agreed to the freezing of the VDA with effect from 4.8.88. the learned Single Judge observed:

> " Therefore if the terms and conditions of the settlement of 1986 are to be held as subsisting inspite of its valid termination, obviously the right of the workmen to claim the overdue VDA could not have been disputed by the petitioner, bearing in mind that this was one of the items agreed and inserted in the earlier settlement which could not have been thus disturbed even after it ceased to operate unless replaced by any other one or by a contract with the same force and authority of fresh settlement. Similarly the fact of the workmen having abstained from demanding its payment fro all this period of more than two years following the cessation of the settlement ostensibly during the period of negotiations of anew agreement need not be also construed as a waiver of their right to press for its demand or as an indication of the existence of a fresh concluded agreement whereby the terminated settlement stood modified with regard to the terms and conditions of the pre-existing contract deemed to operate after the termination of the settlement of 1986.

and dismissed the writ petitions filed by the appellants.

The Division Bench while deciding the Letter Patent Appeals agreed with the dindings recorded by the learned Single Judge and observed:

> "The employers contend that there was an oral understanding between the parties whereby the workmen agreed to freeze the dearness allowance calculated as on the Ist July, 1988 and had agreed not to claim VDA in accordance with the formula set out in the settlement dated 9th December, 1986. The learned Single Judge has rightly rejected the contention of the employers on this aspect of the unnecessary controversy raised on behalf of the petitioners. The alleged oral understanding has not been proved in law. There could not be any oral understanding in law so as to modify a written settlement."

Thus, we find that on facts, it has been found by the Labour Commissioner and the High Court and in our opinin rightly, that there was no oral understanding or agreement as pleaded by the employer to give up or defer the payment of VDA by the employees union. The findings are based on proper appreciation of material on the record. Even otherwise, no oral agreement could be pleaded to vary, modify or supersede a written settlement.

Section 2(p) of the Industrial Disputes Act, 1947 reads as under :

> "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

(Emphasis Supplied) A bare reading of the above definition of `settlement' shows that the settlement contemplated by the above provision excludes any oral understanding or agreement to supersede an earlier written agreement or settlement. In this connection a reference to Rule 58 of the Industrial Disputes (Central) Rules, 1957 would also be relevant. That Rule to the extent relevant reads :

> 58. Memorandum of settlement :- (1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form `H'. (2) The settlement shall be signed by -
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> (a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation:
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> (b) in the case of the workmen, by any officer of a trade union of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose:
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> (c) in the case of the workman in an industrial dispute under Section 2-A of the Act, by the workman concerned.
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> .....
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> (3) Where a settlement is arrived at in the course of conciliation proceeding the conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.
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> (4) Where a settlement is arrived at between an employer an his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central

> Government, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) concerned."

A conjoint reading of Section 2(p) of the Act and Rule 58(supra) unmistakably shows that the settlement contemplated by the said provisions is a written settlement and not an oral settlement. It is not in dispute that the 1986 settlement was a written settlement arrived at between the parties. It could not, therefore, be varied or modified except by a written settlement or by a written memorandum duly signed by the parties incorporating the terms of the so called understanding. Section 92 of the Evidence Act, 1872 also lays down that when the terms of any contract, grant or settlement, as are required by law to be reduced to the form of a document, have been proved as per the provisions of Section 91 of the Evidence Act, no evidence of any oral agreement or settlement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting varying adding to or subtracting from its items. Thus, both on facts of the instant case as well as on the interpretation of law, the conclusion arrived at by the High Court that there was no oral understanding between the parties and that the so called oral agreement pleaded by the appellants could not in any case vary the terms of the 1986 settlement is unexceptionable.

Coming now to the second submission of the learned counsel for the appellants regarding the maintainability of the application under Section 33C(1) of the Act. According to the learned counsel for the appellants, the obligations which flow the 1986 settlement, after the expiry of the period of settlement, could be examined only through a reference under Section 10(1) of the Act or by the labour court under Section 33C(2) of the Act and recourse to the provisions of Section 33C (1) of the Act was not permissible. According to the learned counsel for the respondent on the other hand, the claim for money due, which only was required to be calculated and not determined, could be made under Section 33C (1) of the Act and the workmen were not obliged to take recourse to either Section 10(1) or Section 33C (2) of the Act.

To appreciate the submission of the learned counsel for the parties, it would be advantageous at this stage to notice Sections 33C (1) and (2) of the Act to the extent relevant. Those provisions read thus :

> 33C. Recovery of money due from an employer - (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B 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 application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government for 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 manner as an arrear of land revenue : .... (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 a 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 within a period not exceding three months :
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> ..... (3) ..... (4) ..... (5) .....

In the instant case the period of earlier settlement of 1986 had expired but the expiry of that period would not affect the enforcement of the binding obligations flowing from the earlier settlement till substituted by a fresh settlement. The obligations arising from the earlier settlement would continue to remain in force, though as a contract and not as a binding settlement, but that would make no difference to the maintainability of a claim petition under Section 33C (1) of the Act so long as the requirements of that sub-section are satisfied and the obligations sought to be enforced flow from an earlier settlement or an award or under chapter VA or VB of the Act.

That the rate of VDA had been agreed to and provided for in the 1986 settlement is not in dispute. It is also not in dispute that the claim petition filed by the employees union under section 33C (1) of the Act was for the recovery of the VDA at the rate agreed to between the parties as per the terms of the 1986 settlement for the period for which the same had ben withheld by the employer. Thus, both the rate of VDA and the period for which it was payable were not in dispute could the employees union, therefore, not maintain an application under Section 33C (1) of the Act for the recovery of the VDA arrears?

Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section 83C (1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub- sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no `adjudication'. The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the Labour Court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under sub-Section (2) the amount so determined by the Labour Court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33C (2) exist in addition to any other mode of recovery which the workman has under the law. an analysis of the scheme of Sections 33C (1) and 33C (2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the

amount due to the workmen, flowing from the obligations under a settlement, is per-determined and ascertained or can be arrived at by any arithmetical calculation or simplicitor verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under Section 33C (1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of chapter-VA and the Government. If satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the collector, the collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement an award stands determined in terms of the settlement an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub- section (1) as only a calculation of the amount is required to be made.

A Constitution Bench of this Court in Kays Construction Co. (P) Ltd. vs. State of Uttar Pradesh and Others [(1965) 2 SCR, 276] while considering the scope of Section 6-H (1) and (2) of the U.P. Industrial Disputes Act, 1947, which provisions are in pari materia to Section 33C (1) and (2) opined :

> " The contrast in the two sub- sections between "money-due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be with under the elaborate procedure of the second sub-
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> section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the "amount due" and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due. But the antithesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government under the first sub- section. It is verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit."

The law laid down by the Constitution Bench applies with full force to facts of the instant case and in view of the stablished facts and circumstances of this case, recourse to the proceedings under Section 33C (1) of the Act by the union was just and proper.

The Division Bench of the Bombay High Court was therefore, right in holding that the recovery certificates issued by the Labour Commissioner for recovery of the mounts claimed by the workmen in the proceedings under section 33C (1) of the Act were perfectly valid, legally sound and suffered from no infirmity whatsoever. We do not find any merit in these appeals and consequently dismiss the same with costs. One of fee only in two appeals.

Before parting with the judgment, we would, however, like to clarify that the application which has been filed by the employees union before the Labour Court under Section 33C (2) of the Act for recovery of benefits/amounts, other than those claimed in their application under Section 33C (1) of the Act shall be decided by the Labour Court on its own merits and the findings recorded by us hereinabove shall be considered as confined only to the recovery certificates issued by the Labour Commissioner under Section 33C (1) of the Act, which are the subject matter of the appeals hereby disposed of by us.