

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
(SINGLE BENCH : HON. Mr. JUSTICE VIVEK RUSIA)

W.P. No. 5916 of 2014

**Bhartiya Drugs and Chemicals Shramik
Karmchari Parishad. .. Petitioner.**

Vs.

State of M.P.& others .. Respondents.

W.P. No. 8261 of 2016

Aslam Khan & 9 others. .. Petitioners.

Vs.

State of M.P.& others .. Respondents.

W.P. No. 3 of 2017

Jude & another. .. Petitioners.

Vs.

State of M.P.& others .. Respondents.

**Shri K.N. Puntambekar, Advocate for the petitioners in
W.P. No.5916/2014.**

**Smt. Meena Chaphekar, Advocate for petitioners in
W.P. No.8261/2016 & W.P. No.3/2017.**

**Shri Kaustubh Pathak, Govt. Advocate for the respondents, State
with Ms. Meghna Bhatnagar, Asstt. Labour Commissioner.**

Shri Ankit Dubey, Intervener.

None for others respondents though served

ORDER

(Delivered on 21st August, 2018)

By this common order, all the aforesaid three writ petitions are disposed of as the controversy involved in the matter

is undistinguishable. For the sake of convenience, facts narrated in W.P. No.5916/2014 are taken into consideration.

2. The petitioner, who is a trade union espousing the cause of the workmen has approached this Court seeking direction/writ for execution of the RRC dated 11.2.2014 issued by Dy. Labour Commissioner, Indore for recovery of Rs.9,11,71,222.84 for payment of Basic, Dearness Allowance, Gratuity, Provident Fund, dues of bonus, Earned Leave, etc. The members of the petitioner Union are the employees/ workmen of Jayant Vitamins Limited,(herein after referred as the Company) which went into liquidation before the Board for Industrial & Financial Reconstruction (BIFR).

3. The company viz. Jayant Vitamins Ltd. had stopped production activities since 9.4.1997. The management of the company sought permission of closure u/s. 25-O of the Industrial Disputes Act,1947 (herein after referred as the ID Act) by submitting an application on 26.7.1997 before the competent authority of the State Government. The closure of the company was sought from the back date i.e. 9.4.1997. By order dated 29.8.1997, the State Government declined the permission of closure from the back date 9.4.1997. Since the State Government has refused the closure u/s. 25-O, therefore, company cannot be treated as closed, hence its employees would be entitled for all the benefits available under Chapter V-A and V-B of the ID Act. Thereafter, the petitioner and other trade unions approached Labour Commissioner, Indore by way of application u/s. 33-C(1) of the Act for recovery of wages payable from April, 1997 onwards from the company Jayant Vitamins Ltd.

4. The total land belonging to the said company is more than 350 Hect. and out of which, 25 Hect. land was put to auction. By way of auction of 25 Hect. of the land, sum of Rs.14,15,96,000/- was received by the State Government. A settlement was arrived at between a group of labourers and the company on 11.3.2012 for disbursement of Rs.15,11,00,000/-. In compliance of the aforesaid settlement, claim of 36 workmen had been settled and for the remaining 211 workmen, 10% claim were paid and for remaining 90% of the amount, post-dated cheques were issued, which stood dishonoured. By order dated 6.8.2013, W.P. No.7250/2013 was disposed of with a direction to Tehsildar to proceed further so that other claims of the workmen can also be settled for which, auction of the property was cancelled. The issue in respect of payment of wages came before this Court in W.A. No.882/2013 (Jayant Vitamins Ltd. V/s. State of M.P.) preferred by the company which was disposed of by order dated 10.10.2013 with an observation that the labourers are not getting their legitimate dues as per the RRC and are filing applications one after the other in order to get the fruits of the order dated 9.1.2013. It was further observed that the company is bound to make payment of legitimate dues of the labourers and also bound to comply with the order passed by the Dy. Labour Commissioner.

5. The Labour Commissioner, Indore issued certificate u/s. 33-C(1) of the ID Act in respect of all trade unions and for the group of 108 workers who separated from the Union and formed separate group. The company entered into compromise with 479 workers, which was opposed by 108 workers and finally, the Additional Labour Commissioner wrote two letters dated

19.1.1998 and 4.7.2000 to Tehsildar, Ratlam for recovery of the wages. In pursuant to the aforesaid letters, payment of wages of 108 labourers for the period of 13 months i.e. April, 1997 to April, 1998 was made and thereafter payment for the period from August to November, 1998 was also made.

6. Thereafter, another Union viz. Jayant Vitamin Shramik Sangh constituted on 4.9.1996 filed another application u/s. 33-C(1) of the Act before the Labour Court for issuance of RRC. The management of the company submitted before the Labour Commissioner that out of 366 workmen, 365 workmen have accepted the compromise and the group of 108 workmen headed by Jagdish Parihar are creating obstruction in payment of dues to the workmen, therefore, the application submitted by these 108 workmen is not in accordance with law and is liable to be rejected and another RRC cannot be issued. The management has also raised objection in respect of power of Labour Commissioner u/s. 33-C(1) of the ID Act. The Dy. Labour Commissioner vide order dated 9.1.2013 has held that there is a dispute between the workmen and the company which cannot be adjudicated u/s. 33-C(1), therefore, the labourers are free to approach the Labour u/s. 33-C(2) of the Act. The Dy. Labour Commissioner vide letter dated 6.2.2013 sent a list of 87 workmen in the name of Jagdish Parihar and 86 others for recovery of wages for the period from May, 1998 to July 1998 and from December, 1998 to 2011 (153 months).

7. Thereafter, vide order dated 11.2.2014, the Dy. Labour Commissioner issued the RRC of Rs.9,11,71,222.84 for recovery of the amount under following heads :

विवरण	अवधि	कुल देय रकम
1. संलग्न सूची अनुसार श्रमिक/कर्मचारी	1. बेसिक डी.ए., ग्रेच्युटी, भविष्यनिधि 2. बोनस, मंहगाई भत्ते के अंतर की राशि, अर्जित अवकाश की राशि एवं अन्य की राशि	रु. 6,06,67,874.28 रु. 3,05,03,348.56
	योग –	रु. 9,11,71,222.84

Another order dated 10.1.2014 was issued for recovery of Rs.52,75,924.67 under the following heads :

विवरण	अवधि	कुल देय रकम
1. संलग्न सूची अनुसार श्रमिक/कर्मचारी 61	माह जून 2011 से जनवरी 2013 एवं अक्टूबर 2010 से जनवरी 2013 तक फरवरी 2013 से मई 2013 तक	रु. 45,84,556.48 रु. 6,91,368.28
2. संलग्न सूची अनुसार श्रमिक/कर्मचारी 51		
	योग –	रु. 52,75,924.76

When the aforesaid amount could not be recovered despite RRC, the petitioner, Union approached this Court seeking direction for execution of pending RRC.

8. After notice, respondents, State have filed their return by submitting that 205 members of the petitioner Union are the erstwhile labourers of Jayant Vitamins Ltd. and they never compromised with the company. The State has also admitted that RRC dated 9.1.2013 was issued for recovery of amount of Rs.9,53,88,416/- and as per decision of the Committee, an amount of Rs.8,68,03,458/- has been disbursed in favour of those 205 labourers and the remaining amount of Rs.85,84,958/- is to be disbursed. The State has also admitted that auction of 4.65 Hect. of land which was cancelled at earlier occasion, now for realisation of the duties of all the workers, auction can be held.

9. During pendency of this petition, some of the workmen who are not the members of petitioner Union have also filed an

application seeking intervention in this petition in order to claim their salary and other benefits from the company.

10. During pendency of this petition, by order dated 28.7.2014, the Additional Labour Commissioner, Indore has cancelled the RRC dated 11.2.2014 and referred the dispute to the Labour Court u/s. 10(1) of the Industrial Disputes Act. The terms of the reference are reproduced below :

“ अनुसूची

क्या श्री भंवरसिंह देवड़ा तथा अन्य 87 सेवा नियुक्तों (कुल 88 संलग्न सूची अनुसार) जिनका प्रतिनिधित्व अध्यक्ष, भारतीय ड्रग्स एवं कमिकल श्रमिक/कर्मचारी परिषद, रतलाम द्वारा किया जा रहा है, को वर्ष 1997 जुलाई 2013 तक की अवधि के विभिन्न देय वैधानिक स्वत्वों को प्राप्त करने की पात्रता है। यदि हाँ तो उन्हें किस मद में कितनी राशि के भुगतान की पात्रता है एवं इस संबंध में सेवा नियोजक को क्या निर्देश दिये जाना चाहिए ?

अपर श्रमायुक्त
मध्यप्रदेश, इन्दौर ”

So far as RRC dated 10.1.2014 for Rs.52,75,924.67 is concerned, that has been executed by this Court vide order dated 23.1.2017 and it has been held that the RRC has been satisfied.

11. Heard the learned counsel appearing for the parties at length and perused the material available on record.

12. Now, the only issue under consideration before this Court is, whether the Labour Commissioner has rightly referred the dispute u/s. 33-C (2) the ID Act before the Labour Court by recalling the RRC issued vide order dated 11.2.2014 ?

12. The petitioner Union filed an application u/s. 39-C (1) of the ID Act. After examining the material available on record, the Labour Commissioner vide order dated 11.2.2014 issued the RRC. He had already exercised his jurisdiction by passing the order dated 11.2.2014. There was no opposition by the company

to the said RRC. Hence, the said order has attained finality as no one has challenge before any Court of law. Once the authority has passed some order, unless it is set aside by the higher authority, that order cannot be changed or reversed. In the Industrial Disputes Act, there is no provision which gives power to the respondents to recall its own order *suo motu*. The Labour Commissioner has become *functus officio* after passing order dated 11.2.2014.

13. By order dated 28.7.2014, the Additional Labour Commissioner, Indore has referred the dispute to the Labour Court in respect of payment of dues payable from 1997 to July, 2013 because some labourers have raised an objection in respect of the RRC dated 11.2.2014. It is made clear that the employer i.e. The company did not raise any objection in respect of the RRC dated 11.2.2014. In order dated 28.7.2014, there is no reference about the nature of objection taken by the co-workers.

14. For ready reference, Section 33-C (1) and (2) the ID Act are reproduced below :

“33-C (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 death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government 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 same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be

entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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 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; ¹ within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.”

15. According to sub Section (1) of the Section 33-C the ID Act, where any money is due to the workman from the employer under the provisions of Chapter V-A or Chapter V-B, of the ID Act the workman himself or any other person authorised by him in writing, can make an application to the appropriate Government for recovery of the money due to him and if the appropriate Government 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. The scope of sub Section (2) of Section 33-C is different from the scope of sub Section (1) of Section 33-C. As per sub Section (2) of Section 33-C, 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 money due or as to the amount at which such benefit should be computed, then the question may subject to any rules under the Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

16. In view of the above, while exercising the powers conferred u/s. 33-C(1) of the ID Act, the Dy. Labour Commissioner after recording its satisfaction can issue the RRC to the Collector for recovery of the amount from employer. The powers u/s. 33-C (1) of the ID Act can be exercised only on an application submitted by the workman himself. The ID Act does not confer power on the appropriate Government to exercise *suo motu* or on an application submitted by other co-workers objecting the benefit payable to the workman/applicant to recall its order already passed u/s. 33-C(1) the ID Act.

The Apex court in the case of **Patel Narshi Thakershi and others Vs. Pradyumansinghji Arjunsinghji** reported in **AIR 1970 SUPREME COURT 1273** has held that the power to review is not an inherent power it must be conferred by law either specifically or by necessary implication

4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed

its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was liable to be set aside.

The above view has been affirmed by the Apex court in a case of **LILY THOMAS AND OTHERS Versus UNION OF INDIA AND OTHERS** reported in (2000) 6 SCC 224 as under :-

52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji (supra) held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

Therefore, the order dated 28.7.2014 is patently illegal and beyond the purview of Section 33-C (1) of the Act. It has been passed just to satisfy those workers who had already received the money from the employer by way of settlement and now they are objecting the payment of dues to the members of petitioner Union and other co-workers and same is called as **Unfair Labour Practice** and it unfortunate that the Labour Commissioner has encourage it.

17. The apex Court in the case of **Hamdard (Wakf)**

Laboratories V/s. Dy. Labour Commissioner : (2007) 5 SCC 281 has explained the scope of Section 33-C(1) & (2) of the Act. According to the apex Court, an application u/s. 33-C(1) must be for enforcement of a right. If existence of right is disputed, the provisions may not be held to have any application. Here, in this case, the employer has not disputed the existence of right of the member of the petitioner Union. The Government under the Industrial Disputes Act is only an agency for enforcement of such right as admissible under Chapter V-A and V-B of the Act.

18. In the case of **Punjab National Bank V/s. K.L. Kharbanda : AIR 1963 SC 487**, the apex Court has held that the provisions of Section 33-C the ID Act is in the nature of execution and where the amount to be executed is worked out without any dispute, Section 33-C(1) the ID Act will apply. The relevant part of the observation is reproduced below :

“The appellante Tribunal Act contained S. 20 which provided for execution of awards and was in terms almost similar to S. 33-C. When the Appellate Tribunal Act was repealed in 1956 a provision similar to that contained in S. 20 was brought into the Act at the same time. It is clear therefore that S. 33-C is a provision in the nature of execution and where the amount to be executed is worked out (for examine in an award) or where it may be worked out without any dispute, S. 33-C (1) will apply. But where the amount due to a workman is not stated in the award itself and there is a dispute as to its calculation, sub-sec. (2) will apply and the workman would be entitled to apply thereunder to have the amount computed provided he is entitled to a benefit whether monetary or non-monetary, which is capable of being computed in terms of money.”

19. The High Court of Delhi in the case of **Batlivala & Karani V/s. Dy. Labour Commissioner (W.P. (C) No.4967/2014)** decided on 13.5.2015, has held in Para 17 and 18 as under :

“17. It is now a settled law that the scope of Section 33 C (2) of the ID Act is wider than that of Section 33 C (1) of the said Act. While the claims under the former Section are based on “entitlement” of the workman, the claims that form the subject matter of consideration in the latter Section are the ones that arise out of a settlement or an award or under the provisions of Chapter VA or Chapter VB of the ID Act. The Hon“ble Supreme Court in „Central Bank of India Ltd. and others vs. Rajagopalan (PS) and others“, 1963 (2) LLJ 89 held that scope of Section 33C (2) is wider than that of Section 33C (1) of the ID Act. It was held as under:-

"We have already noticed that in enacting S. 33C the legislature has deliberately omitted some words which occurred in S. 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in S. 33C (1) because S. 33C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under S.33C (1), by itself, can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in S. 33C (2) and to that extent, the scope of S. 33C (2) is undoubtedly wider than that of S.33C (1). It is true that even in respect of the larger class of cases which fall under S.33C (2), after the determination is made by the Labour Court the execution goes back again to S. 33C (1). That is why S. 33C (2) expressly provides that the amount so determined may be recovered as provided for in sub- section (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under S. 33C(2). There is no doubt that the three categories of claims mentioned in S. 33C (1) fall under S. 38C(2) and in that sense, S.33C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent under S. 33C (2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under S. 33C (2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under S. 33C (2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a

claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under S. 33C (1). If a settlement has been duly reached between the employer and his employees and it falls under S. 18(2) or (3) of the Act and is governed by S. 19(2), it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under S. 33C (2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may arise thereafter may have to be dealt with according to the other procedure prescribed by the act. Thus, our conclusion is that the scope of S. 33C (2) is wider than S. 33C (1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under S. 33C (2) which may not fall under S. 33C (1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd. (1962) I LLJ 234 (vide supra), that S. 33C is a provision in the nature of execution, should not be interpreted to mean that the scope of S. 33C (2) is exactly the same as S. 33C (1)."

18. It is also settled law that the scope of both these Sections is limited to the extent that the proceedings under these Sections is in the nature of an execution proceeding. The authority concerned cannot under the garb of these Sections arrogate to itself the disputes which would rightly fall in the domain of Section 10 of the ID Act. The proceedings under these Sections are in the nature of execution proceedings providing for an additional mode of speedy recovery of money due to the workman from the employer. The scope of Section 33C (1) of the ID Act was discussed by this Court in Weston Electronics Ltd. vs. Union of India and Ors. : (1997) I LLJ 1230 Del. wherein it was observed:-

"From the aforesaid discussion, we conclude that the proceedings under Section 33C (1) are in the nature of execution proceedings providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award of the provisions of Chanter V-A or Chapter V-B. Section 33C (1) does not vest any power of adjudication on the appropriate government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate government has been taken by the employer

simply with a view to oust the jurisdiction of the appropriate government under the said Section and deprive the workman of money due to him. On the interpretation of [Section 33C](#) (1) of the Act and scope of power of the appropriate government under this Section, we summarise our conclusions as follows:-

(i) Proceedings under [Section 33C](#) (1) of the Act are in the nature of execution proceedings.

(ii) The appropriate government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry.

(iii) In case the management raises bona fide dispute/s on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V- B, the appropriate government has no right of adjudication of such dispute/s.

(iv) In case of bonafide dispute about the right of a work man of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/Industrial Tribunal.

(v) The appropriate government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or malafide taken with a view to deprive the workman of the money due to him.

(vi) The appropriate government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision under [Section 33C](#) (1) and is also required to make a speaking order giving reasons to that the aggrieved party-

management or workman may seek judicial review of the decision of the appropriate government in accordance with law."

20. The object behind the Industrial Disputes Act, 1947 is mainly to ensure speedier resolution of the industrial disputes by removing procedural delays. The Industrial Dispute Act was brought on the statute book with the object to ensure social justice to both the employers and employees. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life. The Act is applicable to all labourers in order to ensure fair wages and to

prevent dispute with the employer.

21. In the present case, the employer is not before the Court or before the authorities under the Act to object the payment of dues to the workers. The respondent company has not been declared as closed yet, therefore, the benefit admissible under Chapter V-A and V-B of the ID Act are available to its workers. In order to please certain Union or workers, the authorities cannot be permitted to withdraw themselves from exercising the powers conferred under the Act. The labourers/workers/Unions are more comfortable before the Labour Authorities for redressal of their grievances. In the present case, the authority once has exercised his powers has now withdrawn himself from exercising power further for the labourers and relegated the workmen to the Labour Court for establishing their right which are not in dispute. The conduct of office of Labour Commissioner is liable to be condemned. This is nothing but a mockery of Industrial Law and depriving the workmen from their legitimate claim. They are not getting their wages since 1997 and somehow surviving their families. Some of them require money for their treatment, education, etc. of their children. The best period of their life has been gone vested in litigation. The employer is not taking care and the Labour Authorities are feeling shy to help them. This is very sorrow affairs of the Labour Department.

22. In view of the above, though the petitioners have not challenged the order dated 28.7.2014 and other orders by which they have been relegated to the Labour Court, this Court deem it proper to set aside the order dated 28.7.2014 in order to do complete justice. Accordingly, the order dated 28.7.2014 is hereby

quashed/set aside. The Labour Commissioner, Indore is directed to act u/s. 33-C (1) of the ID Act and to get the RRC executed. The Labour Commissioner is also directed to examine the case of other co-workers who are not members of the petitioner Union for recovery of the amount towards their dues. The Collector, Ratlam is also directed to ensure speedy recovery of the amount by way RRC. Let the entire exercise be completed within a period of three months from today.

23. With the aforesaid, this petition stand allowed and disposed of to the extent indicated above. Let a copy of this order be retained in the file of connected cases also. The copy of this judgment be send to the respondents on their official *mail id* for information and speedy compliance.

No order as to costs.

**(VIVEK RUSIA)
JUDGE**

Alok/-