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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 30<sup>th</sup> September, 2014*

+ W.P.(C) 6155/2012 & CM No. 16573/2012 (stay)

SH. SRI CHAND AND ANR.

..... Petitioners

Represented by: Mr. Rajiv Aggarwal and  
Mr. Sachin Kumar, Advocates.

Versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: None for R-1&2.  
Ms. Saroj Bidawat, Advocate for R-  
3/MCD.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

1. Vide the instant petition, the petitioners seek direction to set aside impugned order dated 14.09.2012 by directing the respondent no.2 to perform its statutory functions under section 33(C) (1) of the Industrial Disputes Act, 1947 and thereby execute the award dated 31.07.2006 passed by the Industrial Tribunal-III, Karkardooma Courts, Delhi, in I.D. No. 114/2002.

2. Mr. Rajiv Aggarwal, learned counsel appearing on behalf of the petitioners argued that the present petition for around 30 minutes, despite, none preferred to appear in this matter on behalf of the respondents 1 & 2, however, this Court decided to proceed with even in their absence.

3. Mr. Aggarwal submits that the learned Labour Court passed the award in favour of the petitioners on 31.07.2006. Thereafter, the petitioner approached the Labour Department under section 33(C)(1) of the Industrial Disputes Act, 1947 for execution of the award. However, the same has been denied by respondent no.2 vide communication dated 14.09.2012 as under:-

*“ with reference to implementation of award of Labour Court/Industrial Tribunal, your attention is drawn to your application dated nil received in this office on 09.08.2012 as under:-*

*You are informed that prior to the amendment of the ID Act, 1947, all the awards of the Labour Courts/industrial tribunals were implemented by the Labour Department itself after publication of the awards.*

*Your attention is also drawn to the said amendment carried out in the year 2010 in the ID Act, 1947 wherein, sub-section 11 (8), 11(9) and 11(10) have been incorporated, which is reproduced below:-*

*11(8). ‘Every Labour Court, Tribunal or Industrial Tribunal shall be deemed to be civil court for the purposes of section 345, 346 and 348 of the Code of Criminal Procedure Code, 1973.’*

*11(9). ‘Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a civil court under Order XXI of the Code of Civil Procedure, 1908’*

*11(10). ‘The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a civil court having jurisdiction and such civil court shall execute the award, order or settlement as if it were a decree passed by it.’*

*In view of above explained position/changed procedure of implementation/enforcement of awards of Labour Courts/Industrial Tribunals, now, it is the responsibility of the same Labour Court/Industrial Tribunal who has pronounced the award to implement the same after publication of the award by the Labour Department.*

*You are advised to approach the concerned Industrial Tribunal for enforcement/implemnation of the said labour court/industrial tribunal award.”*

4. Mr. Aggarwal further submitted that the amendment made in section 11(8),(9) & (10) is in addition to section 33(C)(1) of the I.D. Act, therefore, the Labour Department cannot pass on the responsibility on the Civil Courts or the Labour Court/Industrial Tribunal alone to execute the ‘Award’. It is submitted that by the said amendment, section 33 (C) (1) has not been deleted. Thus, by the said amendment, the option is with the awardee either to approach the Civil Court/ the Labour Court/Tribunal in addition to Labour Department.

5. Mr. Aggarwal has fairly conceded that after filing the present petition, the labour department has issued the certificate to satisfy the award amount and same has been satisfied, however, that is subject to disposal of the present petition. Thus, the respondents no.1&2 are still waiting for the opinion of this Court despite the legal opinion given by the State Government and the Central Government as well.

6. The Industrial Disputes Act, 1947 is a welfare legislation. By this Act a cheaper procedure has been provided for the welfare of the workmen. If the respondents no.1&2 do not do their duties as prescribed under section 33(C)(1) of the Act, then the workmen have to approach the Civil Court for implementation of the award which will defeat the very purpose of the Act. Thus, the workmen have to adopt an expensive procedure by engaging counsels and to attend the court proceedings.

7. A similar issue came before the Punjab and Haryana High Court in WP(C) 5648/2011 which has been disposed of vide order dated 22.05.2012 whereby held as under:-

*“10. Record produced before us does not suggest that provisions of sub-sections (9) and (10) to Section 11 of the 1947 Act are in derogation or suppression of existing provisions made under Sections 15, 17, 17-A, 29 and 33-C of the 1947 Act, therefore, Labour Court or Tribunal shall prepare the award in duplicate and shall transmit the award to the civil Court as well as to the appropriate Government for publication in accordance with Sections 15 and 17 of the 1947 Act so that workman can exercise his option either to approach the civil Court for its execution under Section 11 or to approach the authority under Sections 29 or 33-C of the 1947 Act.*

*11. In view of the observations made hereinabove, sub-sections (9) and (10) of Section 11 of the 1947 Act cannot be held to be in derogation or suppression of any other provision of the 1947 Act and same are in addition to existing provisions, therefore, their vires are upheld.”*

8. Moreover, vide Circular dated 19.11.2012 issued by the Labour Department, Government of NCT of Delhi has clarified that the matter relating to implementation of the award was referred to Law & Justice Department for legal opinion in respect of introduction of sub-section 10 to section 11 of the Industrial Disputes Act, 1947. Accordingly, opined as under:-

*“(a) “Yes, the workman or his legal heir can still file claims under section 33 of the 1947 Act even after amendments in the section 11.”*

9. Moreover, this opinion was directed by Additional Labour Commissioner to be circulated to all District In-charges. Despite, the Labour Department is waiting for the opinion of this Court in the present petition. The Industrial Disputes Act is a Central Act. Moreover, the Union of India had filed reply before the High Court of Punjab and Haryana in WP(C) no.5648/2011 whereby specifically stated that newly added sub-sections (9) & (10) to section 11 of the I.D. Act, 1947 are not in suppression of existing provisions contained in section 15,16,17 and 33(C) of the Act rather sub-sections (9) & (10) to section 11 of the I.D. Act are in addition to the existing provisions of the Act.

10. A similar issue came before this Court in WP(C) 7668/2012 which was disposed of vide order dated 08.05.2013 and held as under:-

“14. Since the petitioner has the option to elect one of the two remedies to execute the Award i.e. to proceed under Section 11(10) of the Act, or under Section 33C(1) of the Act, learned counsel for the petitioner submits that the petitioner would withdraw the execution petition before the Civil Court, as he wishes to pursue the execution proceedings before the appropriate Government i.e. Deputy Labour Commissioner under Section 33C(1) of the ID Act. Accordingly, the proceedings before the Civil Court in Execution Petition NO. 46/2011 stand dismissed as withdrawn, and the Deputy Labour Commissioner concerned is directed to proceed under Section 33C(1) of the ID Act to execute the Award in favour of the petitioner.”

11. By the impugned order the respondents no.1&2 compelled the petitioner to file the present writ petition before this Court. Despite the position being very much clear in the Act and even the stand of the Union of India has been filed before the Punjab and Haryana High Court in the

aforementioned case, despite that the respondents no.1&2 have ignored its statutory responsibility.

12. In view of the above, I direct the respondents no.1&2 that after the award, get the award implemented, until and unless the workman specifically take other recourse.

13. In view of the above, the writ petition is allowed with costs of Rs.25,000/- to be paid by respondents no.1&2 in favour of the petitioners.

14. The Registrar General of this Court is directed to recover the costs as per Delhi Revenue Act, if not paid within two weeks from receipt of this order. Thereafter, release in favour of the petitioners.

**CM No. 16573/2012 (stay)**

Dismissed as infructuous.

**SURESH KAIT, J**

**SEPTEMBER 30, 2014**  
**RS**