SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. S. Nainar Sundaram, Chief Justice,
and the Hon'ble Mr. Justice R. K. Abichandani.

KESHAVLAL M. RAO v. STATE OF GUJARAT & ORS.*

Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955 (XLV of 1955) - Secs. 3 & 17 - Sec. 17 can be invoked only where there is no dispute as to the status of the employee to claim wages and the question is one of recovering the amount and/or of determining the quantum of amount - Where the right itself is in question, by virtue of Sec. 3 the employee is relegated to the remedy under the Industrial Disputes Act, 1947 or any other remedy (probably a civil suit).

The moot question that arises for consideration as per the pleas put forth by the learned Counsel for the petitioners is as to whether the petitioners could claim the status of working journalists and as such newspaper employees within the meaning of the Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955. (Para 1)

Section 17 to a very great extent by verbalism and by implications stands in *pari materia* with Sec. 33C of the Industrial Disputes Act, 1947. The scope of Sec. 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterised the machinery under Sec. 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by the applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The similar features between the two provisions are very portent and on the basic factor that the provisions are in *pari materia*, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Sec. 33C(2) of the Industrial Disputes Act, 1947, to delineate the scope of Sec. 17(2) of the Act. So done, Court have to hold that the determination of the extent of the liability, with a view to facilitate recovery under Sec. 17(1) of the Act, alone will fall within the scope of Sec. 17(2) of the Act, Any question or dispute over entitlement, arising on a claim for right to it, and a denial of it will be beyond the scope of a decision under Sec. 17(2) of the Act. There ought to be a pre-determination or settlement of that right, on the basis of which alone the question should arise as to the amount due. (Para 3)

H. A. Raichura, for the Petitioners.
Mehul Rathod, for Respondent Nos. 1 to 3.
K. S. Nanavati, for Respondent Nos. 4 & 5.

S. NAINAR SUNDARAM, C. J. All the three Special Civil Applications can be disposed of by a common order. Though various prayers are raised, the moot question that arises for consideration as per the pleas put forth by the learned Counsel for the petitioners is as to whether the

*Decided on 3-8-1992. Special Civil Application Nos. 4876, 4877 and 4878 all of 1989 for a writ of mandamus directing the Respondent to recover the dues of the Petitioners as arrears of land revenue.

petitioners could claim the status of Working Journalists and as such newspaper employees within the meaning of the Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 45 of 1955, hereinafter referred to as 'the Act'. The status claimed by the petitioners is being disputed by the contesting respondents. The endeavour on the part of Mr. H. A. Raichura, learned Counsel for the petitioners is that the machinery under Sec. 17(2) of the Act must be set in motion even to decide this question. Section 17 as it stands today as a whole reads as follows :

"17. *Recovery of money due from an employer :-*

(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employer himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of Industrial Disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-sec. (1) "

2. So far as regards Sec. 17(1) is concerned, its working will come into play only when there is no dispute of any nature either with regard to the status claimed by the person as the newspaper employee or the quantum of the amount claimed as due by him from the employer. The condition precedent for invocation of Sec. 17(1) is a prior determination by a competent authority or forum as to the amount due to the newspaper employee from his employer and that too under the Act. It is only after the amount due to the newspaper employee from his employer under the Act stands determined, without any disputation over it, the stage will be set for recovery as per Sec. 17(1). Though Sec. 17(1) speaks about the State Government or the specified authority being satisfied as to "any amount is so due", the enquiry in this behalf could not be at a summary level and for a limited purpose to find out as to whether the amount already determined continues to be due or has been discharged fully or partially. Within the scope of Sec. 17(1) determination as such of the amount due, would not fall. Section 17(2) of the Act in contrast by the very opening set of expressions, namely "If any question arises as to the amount due under this Act to a newspaper employee from his employer", sets down the process for determination of the amount due. That could only be on the hypothesis that there is no dispute with reference to the

right of the person to claim the dues as newspaper employee and the corresponding liability of the person arrayed as employer. In other words, there should not be any dispute with reference to the employer-employee relationship under the Act. The dispute could relate only to the amount due under the Act, which calls for a determination of the same. The determination could only be of the quantum of the amount due and not of the right to claim the amount. In that contingency, a power is conferred upon the State Government to refer the question to the Labour Court under the Industrial Disputes Act, 1947 for a decision on that question and there afterwards as per Sec. 17(3) any amount found due by the Labour Court as per its decision has got to be recovered in the manner provided by Sec. 17(1). These are plain implications, deducible from a bare reading of Sec. 17.

3. Section 17 to a very great extent by verbalism and by implications stands in *pan materia* with Sec. 33C of the Industrial Disputes Act, 1947. Section 33C(1) of the Industrial Disputes Act, 1947 is comparable with Sec. 17(1) of the Act; and Sec. 33C(2) of the Industrial Disputes Act, 1947 is comparable with Sec. 17(2) of the Act. The scope of Sec. 33C of the Industrial Disputes Act, 1947 has come up for consideration by pronouncements not only at the level of the High Courts but also at the level of the Apex Court of the land. They are incisive and they have, without any ambiguity characterised the machinery under Sec. 33C(2) of the Industrial Disputes Act, 1947 as one relatable to execution stage and not at the adjudicatory level over the right to relief claimed by applicant and denied by the opponent. They have held that investigation into and determination of any dispute regarding the applicant's right to relief and the corresponding liability of the opponent will be outside the scope of the said provision. The set of expression found in Sec. 33C(2) of the Industrial Disputes Act, 1947 is "If any question arises as to the amount of money due", from the employer to the workman. As already noted, the set of expressions used in Sec. 17(2) of the Act is "If any question arises as to the amount due under this Act to a newspaper employee from his employer". Under Sec. 33C(2) of the Industrial Disputes Act, 1947, the specified Labour Court decides that question. Under Sec. 17(2) of the Act, the question gets referred to the Labour Court for its decision over it. The similar features between the two provisions are very portent and on the basic factor that the provisions are in *pari materia*, there is every warrant for applying the ratio of the judicial pronouncements delineating the scope of Sec. 33C(2) of the Industrial Disputes Act, 1947 to delineate the scope of Sec. 17(2) of the Act. So done, we have to hold that the determination of the extent of the liability, with a view to facilitate recovery under Sec. 17(1) of the Act, alone will fall within the scope of Sec. 17(2) of the Act. Any question or dispute over entitlement arising on a claim for right to it, and a denial of it will be beyond the scope of a decision under Sec. 17(2) of the Act. There ought to be a pre-determination or settlement of that right, on the basis of which alone the question should arise as to the amount due,

4. There is yet another feature present in the Act, which features to a very great extent reinforces our above view of the matter. Section 3 of the Act reads as follows :

"3. *Act 14 of 1947 to apply to working journalists :-*

(1) The provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall subject to the modification specified in sub-sec. (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

(2) Section 25P of the aforesaid Act, in its application to working journalists, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchment of a working journalist had been substituted, namely

(a) six months, in the case of an editor, and

(b) three months, in the case of any other working journalist."

5. As per extract. Sec. 3 of the Act, says that the provisions of the Industrial Disputes Act, 1947, as in force for the time being shall apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act. There is a slight modification expressed in sub-sec. (2) of Sec. 3 thereof, but it is not of much relevance with reference to the question which we are called upon to decide here. By Sec. 3 of the Act, the provisions of the Industrial Disputes Act, 1947 have been extended and applied to or in relation to, working journalists, as they apply to or in relation to workmen within the meaning of that Act. The result is, in respect of rights and reliefs, the working of which is not specifically provided for and covered under the Act, the working journalists are entitled to resort to the process under the Industrial Disputes Act, 1947. We are convinced that the proper remedy, on the facts and circumstances of the case, and as per the implications of the provisions of the Act, which we have noted as above, for the petitioners is to resort to the provisions of Industrial Disputes Act, 1947, for the settlement or determination of their right to reliefs under the Act and for establishment of the status claimed by them as working journalists and as such newspaper employees under the Act, which right to relief and the status are being denied by the contesting respondents. Before us, Mr. H. A. Raichura. learned Counsel for the petitioners did not express any difficulty with reference to the resort to the provisions of Industrial Disputes Act, 1947. What the learned Counsel for the petitioners suggests to us is that the working of the provisions of the Act as set out in Sec. 17(2) will be more convenient. We do not think that on this question we should be guided by any element of convenience, because principles governing the question alone must rule. This conviction deters us not to grant any relief as asked for by the petitioners in these Special Civil Applications and the petitioners are relegated to the remedy under the Industrial Disputes Act, 1947. It is needless to state that the petitioners could also resort to other remedy if any available to them in law to establish their right to reliefs under the Act and for establishment of the status claimed by them as working journalists and as such newspaper employees under the Act. Accordingly, these Special Civil Applications are dismissed with no order as to costs.

(KMV) *Rule discharged.*