

2014 LLR 130
DELHI HIGH COURT

Hon'ble Mr. S. Ravindra Bhat, J.

Hon'ble Mr. Najmi Waziri, J.

LPA 351/2013, C.M.A. 8201/2013, D/-3-9-2013

Shyamji Srivastava & Ors.

vs.

Management of M/s. Public Works Department & Ors.

INDUSTRIAL DISPUTES ACT, 1947 – Sections 33C and 34 – Contract Labour (Regulation & Abolition) Act, 1970 – Section 21(4) – Workmen were engaged through contractors by PWD Department – They complained of non-payment/short payment of wages – Reference was made for adjudication – Labour Court declared the workmen entitled to wages – Contractors were declared employers whereas PWD Department was held as principal employer – Workmen filed application under section 33C of the I.D. Act for recovery of wages which was not dealt – PWD Department confirmed under RTI Act not to be liable for payment on the ground that the workmen were employees of contractors – Workmen filed writ petition – Learned Single Judge dismissed the writ petition – Workmen filed writ appeal – Held, principal employer is liable for payment of wages as per section 21(4) of the Contract Labour (Regulation & Abolition) Act – Even it is categorically stated in section 34 of the I.D. Act that in the event of the contractor failing to pay wages, the principal employer should be liable – Authorities of Labour Department are directed to process the proceedings under section 33C of the I.D. Act by issuing Recovery Certificate in favour of the workmen – Writ appeal is allowed accordingly. Paras 7 & 8

For Appellant : Mr. Dinesh Kumar, Advocate.

For Respondent Nos. 1, 2 and 5 : Ms. Anjana Gosain, Advocate.

IMPORTANT POINTS

- Principal employer is liable for payment of wages to the workmen as per section 21(4) of the Contract Labour (Regulation & Abolition) Act when the immediate employer *i.e.* contractor fails to discharge his obligation.
- Even it is categorically stated in section 34 of the Industrial Disputes Act, 1947 that in the event of the contractor failing to pay wages, the principal employer should be liable to pay the wages to the workmen.

OPEN COURT

Mr. JUSTICE S. RAVINDRA BHAT, J.—1. By the present appeal, the learned Single Judge's order dated 2.4.2013 has been impugned. The petitioners had worked as employees of certain contractors – M/s. Jai Jawan Security Agency and M/s. Indian Industrial Security Services (P) Ltd. They had complained of non-payment/short-payment of wages for a certain period, which was referred to adjudication by the appropriate Government to the Industrial Tribunal on 22.5.2013. The Public Works Department (PWD) of the Govt. of NCT of Delhi, Division-VI was also impleaded as Management No. 1. The Award declared that the workmen were entitled to wages for the period 27.10.2000 to 2.10.2002 at minimum wages. The workers had claimed that they were employed jointly by the contractor and the Govt. of NCT of Delhi. However, the Industrial Tribunal by the Award dated 21.4.2006 found that the Management No. 3, *i.e.* M/s. Jai Jawan Security Agency was the employer of the said workmen and that the Government of NCT of Delhi was the principal employer.

2. After the Award was rendered, the respondents apparently pursued an application under Section 33C of the Industrial Disputes Act, 1947 to the Deputy Labour Commissioner on 30.11.2010. Before that, they appear to have approached this Court by filing W.P.(C) 989/2008. This was permitted to be withdrawn on 10.08.2009 with the liberty to approach the Labour Commissioner.

3. In the application under Section 33C of Industrial Disputes Act, 1947, it was stated that the management, *i.e.* the contractor, despite being served with the demand notice, had failed or neglected to pay the amount or honour the award. Consequently, the request for a certificate was made. Apparently, the application was not dealt with at all and eventually through the Right to Information Act (RTI) route, the respondents/petitioners were informed, on 06.08.2012, by the appellant authority's order that the Govt. of NCT of Delhi, PWD Division-VI and the PWD could not be made liable since no such liability had been fastened upon it. The learned Single Judge upon being approached again took note of previous order dated 06.08.2012 regarding withdrawal and dismissal of the Writ Petition, stating that it was not maintainable. Learned counsel for the appellants urges that in terms of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer would be liable to make payment and honour the award. It was submitted that especially in the facts and circumstances of the case, reference having been made and that the principal employer in the present case, *i.e.*

Division-VI of PWD itself being party Management No.1, the principal basis for fastening liability under Section 21(4) would be applicable and that the appropriate government had fallen into error in declining to even act upon the application under Section 33C. Learned counsel for the Govt. of NCT of Delhi, on the other hand, submitted that the Award has not in any way fastened any liability. The award, it was submitted, clearly held the contractor to be employers of the workers. The contractor was, therefore, primarily liable to make the payment and that Recovery Certificate could be issued, if at all, against the contractor.

4. Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 states as follows:

“21. Responsibility for payment of wages (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labor and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor or ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short-payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labor employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

5. This Court further notices that the expression “pre-employer” has been defined in section 2(g) of the said Act as follows:

“(g) principal employer” means—

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named,

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment.

Explanation. —For the purpose of sub-clause (iii) of this clause, the expressions “mine”, “owner” and “agent” shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of subsection (1) of section 2 of the Mines Act, 1952 (35 of 1952);”

6. The appellant has relied upon the decisions of the Supreme Court in *Hindustan Steel Works Construction Ltd. v. Commissioner of Labour and Ors.*, 1996 SCC (L&S) 1448, where it was *inter alia* observed that if the contractor does not pay the wages to his workmen engaged by him, the terms of Section 21(4) casts liability upon the principal employer to make good the difference. There can be no dispute about this proposition. This Court notices that the impugned order rejected the petition merely on the ground that on a previous occasion the workers had approached the writ Court and withdrawn the said proceedings. The learned Single Judge in our opinion clearly fell into error in doing what he did. The record discloses (specifically, the previous order dated 6.8.2009) that the workers were afforded opportunity to approach the Government and seek a recovery certificate. There is no dispute that the workers did avail of the opportunity. Yet, the Government failed to act and the application under Section 33C was neither acted upon nor rejected. It languished. Eventually in 2012, the respondents became aware that their applications were not even processed for decision by the authorities on the ground that no liability had been fastened upon the government by the award. The award does not dispute fastening liability but at the same time Section 34 of the Industrial Disputes Act, 1947 is categorical. It is clearly stated that in the event of the contractor failing to pay the wages, the principal employer should be liable to pay the wages. That the Govt. of NCT of Delhi PWD Division VI was the principal employer in this case is not in dispute. Under the circumstances, this Court is of the opinion that the Single Judge clearly fell into error in holding that the Writ Petition is not maintainable, by even declining to consider whether the limited direction that is sought for, *i.e.* for processing and collecting such of the amount that is payable by the Govt. of NCT of Delhi, should have been made or not. Consequently the impugned order is set aside.

7. In view of the above findings, direction is issued to the Deputy Labour Commissioner or the concerned authorities under Section 33C of the Industrial Disputes Act, 1947, to process the application made by the appellants/petitioners, within three months and after hearing contentions of the Govt. of NCT of Delhi, issue a Recovery Certificate containing the amounts which are payable to the workers, in response to their applications.

8. The parties shall appear before the Deputy Labour Commissioner in this connection on 16.9.2013. The appeal is allowed in the above terms. Order dasti to the parties.