

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

+ **Writ Petition (Civil) No.16664/2006**

Date of Decision : 17.4.2009

M/S GATI LIMITED

.....Petitioner
Through : Mr.Jitendra Kumar
Jha, Advocate.

Versus

DY. LABOUR COMMISSIONER & ORS.

..... Respondents
Through : Mr.Rakesh Mehta,
Advocate.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in this writ petition has challenged the ex parte order dated 20.5.2005 passed by the Deputy Labour Commissioner, an authority constituted under Minimum Wages Act in case titled Sh.Jagdish Paswan Vs. M/s Gati bearing No.MW/SD/81/04/7358-59 dated 20.5.2005. By the aforesaid order, the claim of the claimant /respondent Sh.Jagdish Paswan for payment of minimum wages for the period from 1st April, 1995 to 30th November, 2004 was allowed and the petitioner was directed to make the payment of Rs.10,860/- to the respondent /workman being the difference of the wages between the wages paid to the respondent/workman and the minimum wages, which was admissible to him at the relevant period of time. The

detailed analysis and the forms as to how the aforesaid differential amount has been arrived at is given in the impugned order. The aforesaid order has been challenged by the petitioner primarily on the ground that the petitioner was not properly served and therefore, it did not get an opportunity to contest the claim of the respondent/workman on merits. An argument subsidiary to this was that the name of the petitioner/Company which is M/s GATI Ltd. was shown to be as M/s Gati simplicitor. It was alleged that the report of refusal is purported to have been obtained by the respondent was not a genuine report and also that the respondent/workman was an employee of the petitioner.

2. I have heard the learned counsel for the parties and perused the record. There is no dispute about the fact that if a party is not served or if it is served but is prevented by 'sufficient cause' to appear in Court, the ex parte proceedings against a party deserves to be set aside. In the present case, the main contention of the petitioner/Company is that it has not been served. This submission has been made by the petitioner/Company on the ground that it is a Limited Company known as M/s GATI Ltd. while as the notices which have been issued either through the process server or even by the courier have shown the name of the petitioner/Company as M/s Gati. It was also urged that the report of refusal dated 23rd February, 2005 was a procured report and therefore, could not form a basis of setting the petitioner ex parte.

3. I have considered the submission of the learned counsel for the petitioner and gone through the record of the Deputy Labour Commissioner who was acting as an authority under the Minimum Wages Act. I have also gone through the impugned order. The impugned order clearly shows that not once but thrice notices have been sent on address C-40, Okhla Indl. Area, Phase-II, New Delhi-20 in the name of M/s GATI and the courier has also not been received back. These summons through courier were sent on 7.12.2004, 5.1.2005, 12.1.2005 and also on 9th March, 2005. It is admittedly not the case where the courier has been received back unserved. Merely because the name of the petitioner /Company is M/s GATI Ltd. and couriers have been sent or the notices have been sent in the name of M/s GATI does not mean that it has not been served. The denial of service by the petitioner in the writ petition of the notices does not inspire any confidence for the simple reason that there is not an iota of averment made by the petitioner in the writ petition that at the relevant time, it was not having its office at C-40, Okhla Indl. Area, Phase-II, New Delhi-20. On the contrary, the addresses which have been furnished by the petitioner in the memo of parties are of Mahatma Gandhi Road, Sickandarabad, Andhra Pradesh and having its Zonal office at 14/19/2, Old Delhi Gurgaon Road, Samalka, New Delhi. This clearly shows that the conduct of the petitioner/Company is not truthful even in revealing that at the relevant time, it was having its address or business operations at C-40, Okhla Indl. Area, Phase-II, New

Delhi-20. The entire purpose seems to be to avoid the service or deny the service of summons. This is further fortified from the fact that the Dy. Labour Commissioner had also directed the summons to be sent through process server and the same were given dasti to the respondent /workman. On the summons being served by the process server also there was a report of refusal given by the process server. The report of the refusal by the process server has been said to be a procured report but in the light of the facts as have been stated hereinabove, there is no reason as to why the Court should not believe that the report, which has been furnished by the process server is not a correct one given in the ordinary discharge of his duties by the process server. The process server has obviously no animus or malafides qua the petitioner to furnish a false report moreover he is a public servant and there is presumption that a public servant will discharge his duties in the normal course of business and the assumption of genuineness of the report furnished by him would attach to the same unless something tangible to the contrary is shown which the petitioner has failed to do. Therefore, this plea of the petitioner that it was not served must necessarily fail.

4. The Court would have considered even in all fairness to give an opportunity to the petitioner to contest the matter also if the stake in the matter would have been high. A perusal of the record shows that the total amount of differential between the minimum wages and the actual wages which have been paid to

the respondent/workman and which have been awarded by the impugned order comes to only Rs.10,568/- which has been granted. Even for such paltry amount, the contest has been made although the learned counsel for the respondent had given a suggestion to settle the amount after negotiations. This observation is being passed by the Court on account of the fact that even during the pendency of the matter, the learned counsel for the respondent had suggested that he is not averse to the idea of settlement of the matter. The petitioner did not respond positively.

5. For the reasons mentioned above, I am of the considered opinion that this is a case where the petitioner had been actually served and if the petitioner has chosen not to appear despite the service, there is no sufficient ground for setting aside the ex parte order against the petitioner which has been passed by the Dy. Labour Commissioner in the capacity of authority constituted under Minimum Wages Act on 20th May, 2009.

6. Accordingly, the writ petition of the petitioner is without any merit and the same is dismissed.

The file be consigned to the record room.

V.K. SHALI, J.

APRIL 17, 2009

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