

Court No. - 6

Case :- WRIT - C No. - 27667 of 2023

Petitioner :- M/S Rama Infotech Private Limited

Respondent :- Employees Compensation Commissioner Under
Employees Compensation Act 1923 And 4 Others

Counsel for Petitioner :- Umesh Chandra Kesarwani

Counsel for Respondent :- C.S.C.,Gyanendra Kumar
Mishra,Ramesh Kumar Mishra

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Mr. Ramesh Kumar Mishra, learned counsel for respondent nos.3, 4 and 5 has raised preliminary objections on several grounds, which are as follows:-

(i) the parties against whom award has been passed have not been arrayed in the writ petition, therefore, the writ petition is liable to be dismissed on the ground of non-joinder of parties.

(ii) the writ petition is not maintainable in view of the availability of remedy of appeal under Section 13 of Employees Compensation Act, 1923.

(iii) a Writ C No.7638 of 2023 was filed by Smt. Vandana Vishwakarma And others (respondent nos.3 to 5 in the present petition) wherein, the Co-ordinate Bench of this Court vide order dated 15.09.2023, disposed off the writ petition with a direction to the District Magistrate to realize the amount payable to the petitioners (respondent nos.3, 4 and 5 in the present petition), within a period of two months from the date of production of certified copy of that order, therefore, the present petition is not maintainable.

(iv) There are several concealments of facts regarding the recall application as filed.

2. Answering the aforesaid objections, learned counsel for the petitioner submits that:-

(i) he may be permitted to implead the necessary parties in the array of parties during the course of the day as the same could not be done due to inadvertent mistake.

(ii) The alternative remedy is not a bar where there is illegality apparent on the face of record, in the present case, on the basis of order dated 22.02.2022, the recovery certificate has been issued, the aforesaid order is not in existence, the same has been set aside.

(iii) As regards the order passed in Writ C No.7638 of 2022, directing the District Magistrate to recover the amount pursuant to the order dated 22.02.2022, emphasising on page 38, placing the order dated 17.05.2022, vide which, the order dated 22.02.2022 has been set aside, learned counsel for the petitioner submits that the order passed by Division Bench of this Court cannot be relied upon as the very basis of passing the order i.e. order dated 22.02.2022 has already been set aside.

3. Learned counsel for the petitioner is permitted to implead the respondent nos.6, 7 and 8 in the array of parties during course of the day.

4. Heard Mr. Umesh Chandra Kesarwani, learned counsel for petitioner, learned Standing Counsel for respondent No. 2 and Mr. Ramesh Kumar Mishra, learned counsel for respondent Nos. 3 to 5.

5. The writ petition has been filed with a prayer to quash the recovery certificate dated 06.06.2023 issued in E.C. Case No.31 of 2021 by respondent no.1, Employees Compensation Commissioner and Deputy Labour Commissioner, Prayagraj Region, Region.

6. Placing the orders passed in similar controversy, learned counsel for the petitioner, requests that the recovery proceeding may be kept in abeyance.

7. Learned counsel for the petitioner submits that the petitioner who is a contractor and is duly registered under the Contract Labour and Regulation Act had supplied labourers to the Purvanchal Vidyut Vitran Nigam Limited. Certain disputes pertaining to the employees compensation has arisen and accordingly proceedings were initiated by the Employees Compensation Commissioner/Dy. Labour Commissioner, Prayagraj, resulting an order dated 22.02.2022 wherein the Executive Engineer, Purvanchal Vidyut Vitran Nigam Limited was directed to pay compensation for an amount of Rs.8,54,384/- with regard to accident occurring on 29.02.2020 along with 12 % interest within a period of 30 days.

8. It is stated that against the said order, the petitioner had preferred an application for recall and by means of order dated 17.05.2022, the application for recall was allowed and the matter was fixed for further hearing. In the meantime, it seems that the private respondents had also filed an application for recall of the order dated 17.05.2022 which is pending consideration.

9. Meanwhile, to execute the award dated 22.02.2022, recovery proceedings were initiated against Vidyut Vitran Khand - I, Prayagraj and a recovery notice was sent to the District Magistrate, Pratapgarh for execution on 06.06.2023. The petitioner claiming himself to be a party in the proceedings before the Employees Compensation Commissioner as well as the Contractor who had supplied the employees to the Vidyut Vitran Nigam Limited has approached this Court challenging the recovery proceedings initiated by means of order dated 06.06.2023.

10. The respondents had initially submitted that present writ petition is not maintainable at the behest of the petitioner inasmuch as the award was passed against the Executive Engineer, Purvanchal Vidyut Vitran Nigam Limited and the petitioner would not be a person aggrieved against the said order dated 22.02.2022, but after arguing the matter at some length submits that all pending applications may be decided by the Compensation Commissioner expeditiously.

11. Be that as it may, it seems that the workmen has also preferred an application for recall of the order dated 17.05.2022 which is pending consideration before the Employees Compensation Commissioner.

12. Accordingly, in the interest of justice and to give quitus to the dispute in the present case and also with the consent of both the parties, the writ petition is **disposed off** with a direction to the Employees Compensation Commissioner i.e. respondent No. 1 to decide all the pending applications filed by the parties subsequent to the order dated 22.02.2022 expeditiously.

13. Let the said applications be decided within a period of two months from the date a certified copy of this order is produced before respondent No. 1. Both the parties undertake to cooperate in the proceedings and shall file necessary reply / objections expeditiously, say, within next two weeks.

14. It is further provided that recovery proceedings shall be kept in abeyance and shall be subject to the final order passed by Employees Compensation Commissioner in pursuance to the direction of this Court.

Order Date :- 19.10.2023

Rahul.