

GAHC010235422013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 7205 of 2013

Swamina International Private Limited

-Versus-

The State of Assam and 4 Ors.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner	: Mr. A. Dasgupta,
	Ms. B. Das,
For the respondents	: Ms. U. Das,
	Ms. R. B. Bora.
Date of hearing & judgment	: 20.06.2024

JUDGMENT AND ORDER (Oral)

Heard Mr. A. Dasgupta, learned Senior Counsel, assisted by Ms. B. Das, learned counsel for the petitioner. Also heard Ms. U. Das, learned counsel for the respondent No. 1 and Ms. R. B. Bora, learned counsel for the respondent Nos. 2 & 3.

2. This petition has been filed for setting aside the conciliation settlement made by the Labour Inspector -cum- Conciliation Officer, Kokrajhar on 17.10.2013 between the petitioner, M/s Bharat Heavy Electricals Limited and the respondent Nos. 4, 5 & 6.

3. By this conciliation settlement dated 17.10.2013 issued by the Labour Inspector -cum- Conciliation Officer, Kokrajhar, the claim of the respondent Nos. 4, 5 & 6 for payment of their dues from the petitioner was realized from M/s Bharat Heavy Electricals Limited, which was to be realized from the petitioner. The said conciliation settlement had been made with the agreement of the petitioner, M/s Bharat Heavy Electricals Limited and the respondent Nos. 4, 5 & 6.

4. The petitioner's counsel submits that though the Conciliation Officer has recorded that the petitioner had agreed to the terms of the conciliation settlement dated 17.10.2013, the petitioner had actually not agreed to the settlement, for recovering the amount paid by M/s Bharat Heavy Electricals Limited from the petitioner. He also submits that the Conciliation Officer had exercised the power provided under Section 15 of the Payment of Wages Act, 1936 (hereinafter referred to as the Act), which could only be exercised by a Labour Court.

5. Ms. U. Das, learned counsel for the respondent No. 1 submits that the Conciliation Officer has not exercised the power under Section 15(3) of the Act, as can be seen from the perusal of the conciliation statement read with letter dated 10.09.2013 issued to the petitioner by the Conciliation Officer, stating that if he did not attend the office on 23.09.2013, action under Section 15(3) of the

Act would be initiated against the petitioner. As the petitioner was a part of the conciliation proceedings, Section 15(3) of the Payment of Wages Act had not been invoked.

6. I have heard the learned counsels for the parties.

7. The two questions that have to be decided are as to whether the petitioner had agreed to the conciliation settlement made on 17.10.2013 made by the Conciliation Officer and as to whether the Conciliation Officer had exercised the provisions of Section 15 of the Payment of Wages Act, 1936.

8. The facts of the case are that Bharat Heavy Electricals Limited had been given a contract work to install plants and machineries to generate electricity. Bharat Heavy Electricals Limited engaged the petitioner for doing the contract work. The respondent Nos. 4, 5 & 6, who were the workmen of the petitioner, raised a dispute with regard to non-payment of dues by the petitioner. The Conciliation Officer informed the petitioner that unless it appeared for negotiation with regard to the complaint made by the respondent Nos. 4, 5 & 6, action would be initiated against the petitioner under Section 15(3) of the Act.

9. Thereafter, negotiation and conciliation proceedings were held between M/s Bharat Heavy Electricals Limited, the petitioner and the respondent Nos. 4, 5 & 6. As per the agreement arrived at between the parties, M/s Bharat Heavy Electricals Limited was made responsible to pay the claims of the respondent Nos. 4, 5 & 6, amounting to Rs. 1,91,900/-. The said amount was then to be recovered by M/s Bharat Heavy Electricals Limited from the petitioner.

10 The operative portion of the conciliation statement dated 17.10.2013 is reproduced below as follows:-

“However in the discussion the representative of the Principal Employer M/s Bharat Heavy Electricals Ltd. has committed to make responsible for payment of the above claims entitled by the workers an amount of Rs. 1,91,900.00 (Rupees one lac ninety one thousand nine hundred) only (claims copies enclosed) to the workers in conformity with Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 and also committed that the payment will be made to the workers within the one month from the date of signing of this terms of settlement agreement of the minutes of discussion and it is also agreed by and between the parties that the entire amount paid to the workers as earned wages and the other benefits will be recovered from the bills payable to the contractor Le. M/s Swamina International Pvt. Ltd. complying with the above mentioned of the Act.

Appreciating the terms of settlement agreement arrived between the representing the management of M/s Bharat Heavy Electricals Ltd. and M/S Swamina International Pvt. Ltd. the workers gladly agreed to accept the above amount of earned wages and other benefits as full and final payment made by the management (employer) and thus the instant complaint case has been settled on this the 17th day of October, 2013.

It is requested by the representative of the Principal employer M/s Bharat Heavy Electricals Ltd., the workers will submit a no due certificate during the time of money (amount) received by the worker against the amount disbursement made by the management.

The parties signing of this agreement are legally bound to abide these terms of settlement without breaching the same.”

11. A perusal of the above clearly goes to show that the petitioner had agreed to the terms and conditions of payment to be made to the respondent Nos. 4, 5 & 6 by M/s Bharat Heavy Electricals Limited with the subsequent recovery to be made from the dues payable to the petitioner. However, the petitioner has now taken a stand that he had not agreed to the said concession recorded in the conciliation agreement. It is impossible for this Court to know as to what had transpired before the Conciliation Officer and as to who had said what. This Court can only go into the issues on facts, on the basis of what has been recorded by the Conciliation Officer. In this regard, a little help may be taken in an issue raised of a similar nature, by referring to the judgment of the Supreme Court in the case of ***State of Maharashtra vs. Ramdas Shrinivas Nayak and another***, reported in ***(1982) 2 SCC 463***, wherein the Supreme Court has held that a Judge's record is conclusive and none can contradict it, except before the Judge himself.

12. In the present case, though the Conciliation Officer is not a Judge, the ratio of the said case can be made applicable to the issue raised by the petitioner in this case. Accordingly, this Court is of the view that the petitioner would have to approach the Conciliation Officer again by way of a review petition, if so advised, to ventilate his grievance regarding recording of a concession not made by the petitioner. With regard to the question whether the Conciliation Officer had exercised the power under Section 15 of the Payment of Wages Act, 1936, this Court finds that the Conciliation Officer has not exercised the power under Section 15 of the Payment of Wages Act, 1936, but the power

provided under Section 12 of the Industrial Disputes Act, 1947.

13. In view of the reasons stated above, this Court does not find any ground to exercise its discretion in the present case. Accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant