

Court No. - 33

Case :- WRIT - C No. - 15614 of 2023

Petitioner :- M/S Anglo Eastern Ship Management

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Ravi Yadav,Utkarsh Srivastava

Counsel for Respondent :- C.S.C.,Saumitra Dwivedi,Vagish Kumar Misra

Hon'ble Prakash Padia,J.

1. Order dated 18.04.2023 passed by respondent no.2-Commissioner, Employees Compensation Act, 1923, Ghaziabad/Deputy Labour Commissioner, Ghaziabad in ECA Case No. 13 of 2021 (Dr. Amrita Singh and Ors. Versus M/s Anglo-Eastern Ship Management (India) Private Limited and Ors), is under challenge in the present writ petition.

2. Facts in brief in the present writ petition are that petitioner earlier approached this Court by filing Writ-C No. 10332 of 2022, which was finally disposed of vide judgment dated 13.04.2022. The aforesaid order is extracted below:-

"1. Heard Sri Vinayak Mithal, learned counsel for the petitioners and Sri Varad Nath, alongwith Sri Saumitra Dwivedi and Sri Virendra Kumar Yadav, learned counsel appearing for claimant respondent nos. 1, 2, 3 and 4.

2. Presently, challenge has been raised to the order dated 20.12.2021 passed by the Competent Authority/Commissioner, E.C. Act, Ghaziabad, whereby the said authority has rejected the objection raised by the petitioners as to continuance of proceedings for award of compensation arising from the death of Sanjay Chaudhary in the course of his employment by the petitioners.

3. In short, it has been submitted by learned counsel for the petitioners that the Employee's Compensation Act, 1923 (hereinafter referred to as the 'Act') wherever applicable provides for compensation, amongst others on the occurrence of death from injuries suffered in the course of employment. For its computation, Section 4(1)(a) of the Act provides a rough and ready measure. That amount may in the least be Rs. 1,20,000/- or such higher amount as may be computed by multiplying half the monthly wage with the factor provided under Schedule IV to the Act. Since monthly wage for the purpose of Section 4(1) of the Act have been notified from time to time, the same could not be taken at more than 15,000/- as per the last notification made in that regard being Notification No. - S.O. 71(E) dated 03.01.2020.

As a fact, it has been submitted, the earlier notification prescribing such monthly wage at Rs. 8,000/- was applicable to the facts of the present case. Thus, a maximum amount of compensation that may be claimed under the Act may not exceed the amount at the rate computed by multiplying half the maximum of such monthly wage i.e. Rs. 4,000/- or 7,500/- by the appropriate factor. Even according to the respondent claimants, that factor would not more than 166.29. Thus, the maximum amount of compensation that may be awarded under the Act would not exceed about Rs. 12,47,175/- depending on the monthly wage and

applicable factor. In any case, the petitioners have paid a much higher amount of compensation to all the claimants being Rs. 71,61,977/- to the claimant respondent no. 1 and Rs. 13,91,621/- to claimant respondent no. 2, 3 and 4 each. In all Rs. 1,13,36,840/- has been paid. It exceeds the maximum amount of compensation payable under the Act. Thus, it has been submitted, the competent authority under the Act has no jurisdiction to entertain the claim. The objection raised by the petitioners is stated to have been wrongly rejected.

4. It has been further asserted, unless such objection is first dealt with, the petitioners are liable to suffer an irreparable injury since in the event of an award being made contrary to law, the petitioners would be compelled to deposit the entire amount of such illegally determined amount before they seek any remedy of appeal under the Act.

5. The above arguments have been vehemently opposed by learned counsel appearing for the respondent claimants. He would submit, in the first place, no such objection has been raised, as has been canvassed before this Court. Second, relying on Article 26.2 pertaining to loss of life - death in service of the Collective Bargaining Agreement (CBA) for Indian Officers (01.01.2015 to 31.12.2017), the respondent claimants are entitled to claim compensation under that Agreement without prejudice to other claim that they are entitled to make under law. The only condition being that a claim thus made may be off set against claim awarded against the other. Thus, it has been submitted, there is no inherent lack of jurisdiction in the proceedings before the competent authority under the Act.

6. Having heard learned counsel for the parties and having perused the record, at present, the petitioners do not appear to have raised the objection, as has been canvassed in the present case. Perusal of the application dated 01.12.2021 (Annexure No. 7 to the writ petition) reveals nebulous ground of lack of jurisdiction. No exact objection was framed or raised in that application as may allow the Court to consider the submissions advanced by learned counsel for the petitioners, on merits, at this stage. Equally, submission advanced by learned counsel for the respondent claimants may remain to be tested.

7. Accordingly, while the present writ petition does not merit any adjudication at this stage, it is left open to the petitioners to raise a proper objection, if advised, in the proceedings that are still pending before the competent authority under the Act. If such objection is raised by the petitioners, within a period of two weeks from today, in writing, the respondent claimants would be entitled to file a detailed objection thereto. Such objection may be filed within a further period of two weeks therefrom. Thereupon, the competent authority may fix a date for hearing and pass a reasoned and speaking order dealing with the exact objection as may be raised by the petitioner within a further period of one month from the date of filing of such objection.

8. It is made clear that it may remain open to the petitioner to raise any other or further preliminary objection while making compliance of this order. Once the preliminary objection thus raised have been dealt with, the matter may proceed on merits.

9. With the above observation, present writ petition is disposed of"

3. It is argued by the learned counsel for the petitioner that certain observations were made by this Court while passing the aforesaid judgment as contained in para no. 7 of the aforesaid judgment.

4. Pursuant to aforesaid, order dated 18.04.2023 was passed by respondent no.2-Commissioner, Employees Compensation Act, 1923, Ghaziabad/Deputy Labour Commissioner, Ghaziabad.

5. It is admitted by the learned counsel for the parties that observations made in the aforesaid writ petition (Supra) were not taken into consideration by the respondent no.2 while passing the aforesaid order.

6. Heard Sri Utkarsh Srivastava, learned counsel for the petitioner, Sri Ishan Mehta, learned counsel for the respondent nos. 3 to 6 and perused the record.

7. From the perusal of the order dated 18.04.2023, it is clear that the observation made by this Court, specially in para no. 7 of the judgment dated 13.04.2022 was not complied with.

8. In this view of the facts and also in the interest of justice, order dated 18.04.2023 was passed by respondent no.2-Commissioner, Employees Compensation Act, 1923, Ghaziabad/Deputy Labour Commissioner, Ghaziabad is hereby ***set aside***. The respondent no.2 is directed to pass fresh order strictly in accordance with the direction given by this Court in para no. 7 of aforesaid judgment, preferably within a period of three months from the date of production of certified copy of this order.

9. With the above observations, the present writ petition is ***allowed***.

Order Date :- 21.4.2025
T.S.