

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1555 OF 2014
WITH
CIVIL APPLICATION NO.10752 OF 2014

The Zilla Parishad, Nashik,
Through its Chief Executive Officer,
Zilla Parishad, Nashik

..APPELLANT
(Orig. Respdt. No.1)

VERSUS

1. Smt. Kamalbai w/o Eknath Dhangar,
Age : 45 years, Occu. Household,
R/o Fagaon, Tq. & Dist. Dhule
2. Rameshwar s/o Eknath Dhangar,
Age : 20 years, Occu. Labour,
R/o Fagaon, Tq. & Dist. Dhule
3. Jayashri d/o Eknath Dhangar,
Age : 17 years, Minor U/g. Of
Res.No.1 – mother,
R/o Fagaon, Tq. & Dist. Dhule
4. Rahul s/o Eknath Dhangar,
Age : 14 years, Minor U/g. Of
Res.No.1 – mother,
R/o Fagaon, Tq. & Dist. Dhule
5. The Grampanchayat, Chanduri,
Tq. Niphad, Dist. Nasik,
Through its Sarpanch
6. Somnath s/o Karbhari Dighe,
Age : Major, Occu. Contractor,
R/o Dindori, Dist. Nashik

..RESPONDENTS
(No.1 to 4 – Orig. Claimants
No.5 & 6 – Orig. Res.No.2 & 3)

Mr U.B. Bondar, Advocate for appellant;
Mr Mukul S. Kulkarni, Advocate for respondents no.1 to 3

CORAM : N.W. SAMBRE, J.

DATE : 28th July, 2015

ORAL ORDER :

This appeal is by Zilla Parishad, Nashik, who was non-applicant no.1 to the Workmen's Compensation Application No.118 of 2011, decided by the Judge, Labour Court, Dhule and *ex officio* Commissioner for Workmen's Compensation (hereinafter referred to as the "Commissioner", for the sake of brevity), by judgment and award dated 19th November, 2013, directing original respondents no.1 to 3 to pay jointly and severally compensation of Rs.5,08,320/- to respondents no.1 to 4/original claimants, within a period of three months from the date of award, failure whereof shall carry interest on the amount awarded at the rate of 8% per annum.

2. The appellant herein is a body incorporated within the meaning of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as the "Zilla Parishad Act") and in view of its statutory scheme, has a power to have supervision and control over the administrative and financial aspects of the Grampanchayats and Panchayat Samitis.

3. One of the schemes introduced by the Government of India and the State Government, through its Department of Water Conservation and Sanitation, was to provide potable water to the villagers and while implementing the said scheme, the steps for construction of over-head tank and the other work was executed by employing/hiring private contractors, by the Grampanchayat.

4. The Grampanchayat, i.e. non applicant no.2, entered into an agreement (Exh.14) with non applicant no.3 – a private contractor, for execution of the work as regards construction of over-head water tank under the scheme.

5. The said work was allotted to non applicant no.3 before the Commissioner and an agreement to that effect was entered into between the concerned committee of the Grampanchayat. Amongst other, the term incorporated in the said agreement was that the Contractor - non applicant no.3 before the Commissioner, shall indemnify the loss caused or any liability arising out of death or injury to the labourer employed for executing the work in question.

6. It appears that on 21st August, 2010, one Eknath Gorakh Dhangar, who was then claimed to be of the age of 42 years, had fallen down while doing certain work of fixing of centering, in relation to over-head water

tank and as such, expired on 5th September, 2010.

7. Respondents no.1 to 4/claimants brought in action the claim petition being W.C.A. No.118 of 2011, seeking compensation of Rs.7,62,427/- from non applicants, as according to them, they are entitled for the same in view of the provisions of the Workmen's Compensation Act, 1923.

8. It is claimed in the claim petition that the deceased was hired by non applicant no.3 – contractor for executing the work of non applicant no.1 – Zilla Parishad and non applicant no.2 – Grampanchayat and at the time of his death, his age was 42 years and he was drawing wages of Rs.6,000/- per month.

9. In response to the notice issued by the Commissioner, the Zilla Parishad – appellant herein, filed written statement at Exh.C-6 and denied the claim. While denying the claim, it was brought on record that the scheme in question was independently executed by the Grampanchayat and there is no necessity to have any contract in between the Zilla Parishad, Grampanchayat and the concerned contractor. It was also brought on record that in view of financial autonomy given to the Grampanchayat for the purpose of execution of the scheme in question, the Zilla Parishad ought not to have been added as a party - non applicant and as such, the claim petition itself was not tenable as against the Zilla

Parishad.

10. In support of its defence, the Zilla Parishad has examined witness, namely, Madhukar at Exh C-17, who has deposed that while executing the work in question, the Zilla Parishad had neither any role to play nor the work in question was required to be supervised by it through its officials. In cross-examination on behalf of respondents no.1 to 4/claimants, he has stated that the scheme of Zilla Parishad consists of Grampanchayat, Panchayat Samiti and Zilla Parishad and the Zilla Parishad has control over financial assistance to both these bodies.

11. Non applicant no.2, i.e. Grampanchayat and non applicant no.3 – contractor have not filed written statement and as such they were proceeded *ex parte*.

12. The Commissioner, on the basis of aforesaid, proceeded to evaluate the responsibility and liability to pay the compensation as the happening of the incident, causing death of the employee, was not in dispute. The Commissioner, as such, by the impugned award, has ordered payment of compensation.

13. Mr Bondar, learned Counsel appearing on behalf of the appellant – Zilla Parishad, would urge that the Zilla Parishad has hardly any role to

play in the matter, particularly in the background of defence raised by virtue of written statement and the evidence brought on record. So as to substantiate this contention, he has placed reliance upon the agreement Exh.14, executed by and between the Grampanchayat and original non applicant no.3, to which the appellant – Zilla Parishad was not a party and non applicant no.3 – contractor has undertaken to pay the necessary compensation, in case incident of death or injury to labourer arises out of the work in question. Apart from above, while inviting my attention to the Govt. Resolution dated 8th October, 2003, Mr Bondar would urge that the Zilla Parishad has hardly any role to play in the matter, as the Zilla Parishad is not a mandatory authority to the agreement to be entered into between the Grampanchayat and the concerned contractor. Apart from above, he would urge that primarily, the deceased labourer was hired by non applicant no.3 contractor and it is his primary responsibility, in view of agreement Exh.14, to pay the compensation as claimed.

14. Mr Bondar would further urge that if this Court is not convinced with the case of the present appellant, the appellant be granted liberty to recover the amount in proportion to the responsibility as shall be fastened, from original non applicants no.2 and 3, i.e. Grampanchayat and the contractor.

15. Mr Kulkarni, learned Counsel appearing on behalf of respondents no.1 to 4/claimants would urge that the identity of the present appellant, pursuant to the Zilla Parishad Act cannot be disputed, so also in view of the functions which are required to be discharged by the Zilla Parishad, it cannot be termed as a party stranger to the agreement in question, particularly the work of execution thereunder. While relying upon the provisions of section 124 of the Zilla Parishad Act, he would urge that the responsibility to pay the compensation has to be fastened on the Zilla Parishad as even though the Zilla Parishad is not principal employer, yet if the execution of the work in question is taken into account, the same was executed for and on behalf of the Zilla Parishad as it is not in a position to carry out the work on its own and as such, the work was got to be executed by its subordinate agency/body i.e. Grampanchayat through the contractor. Apart from above, Mr Kulkarni would urge that the law on the said aspect of the matter is well settled and for the said purpose sought to draw support from the judgment of this Court, in the matter of **Sarjeras Unkar Jadhav vs. Gurindar Singh & anr.**, reported in **1990 (3) Bom. C.R. 314**, so also in the matter of **Executive Engineer, Public Works Department vs. Raisabanoo Abdul Rahuf & ors.**, reported in **2009 (1) Bom. C.R. 434**.

16. Mr Kulkarni would further urge that once the Commissioner has, on the basis of evaluation of material before him, fixed the liability and

responsibility to pay compensation to be joint and several, the instant appeal at the behest of the present appellant, according to him, is liable to be dismissed. He would urge that the appeal, as such, be dismissed by refusing the liberty for recovery as sought on behalf of the appellant.

17. In view of rival submissions, in my opinion, following point arises for my consideration :-

Whether the Commissioner, in view of the provisions of the Workmen's Compensation Act, 1923, was right in ordering joint and several liability of the present appellant along with other non applicants to pay compensation, when the appellant was not a party to the contract of execution of the work, out of which the incident arose ?

18. It is not in dispute that the deceased employee has expired out of an accident caused while executing the work of construction of over-head water tank to which effect an agreement was executed between original non applicants no.2 and 3, i.e. Grampanchayat and private contractor.

19. The role that is attributed to the present appellant, particularly in the background as could be analyzed from the plea that is raised in the claim petition and the written statement, is that the Zilla Parishad has financed

around 80% of the work in question and the balance amount was made available or arranged through the funds of Grampanchayat. A specific pleading to that effect is raised in paragraph 3 of the claim petition, which unequivocally speaks of appellant – Zilla Parishad providing 80% finance for carrying out the work in question. The appellant – Zilla Parishad in its reply has admitted the same in toto, particularly that it has financed 80% of the work in question.

20. Once the aspect as regards finance is admitted by the appellant, in my opinion, even though as an agency or statutory body working for and on behalf of the Central Government or the State Government, it will be required to be held responsible for payment of compensation. This Court is also mindful about the social object that is sought to be achieved, for which the said statute was brought into effect.

21. Upon perusal of the award, it is required to be noted that the Commissioner was alive to the role attributed to each of the non-applicants before him, in the matter of execution of the work in question. While doing so, even though an agreement Exh.14 came to be executed between the contractor and the Grampanchayat, yet the said document Exh.14 cannot be of any help to the present appellant, to absolve it of its obligation particularly when the fact remains that the appellant is a party to the execution of the work in question by giving finance to the extent of

80%. Apart therefrom, in view of the scheme of the Zilla Parishad Act, the role that is attributed to the present appellant, of having over-all supervision and control on the administrative and financial matters of the Grampanchayats and Panchayat Samitis, cannot be lost sight of. Merely by an agreement Exh.14, the responsibility and liability of the Zilla Parishad cannot be washed away when it remained to be one of the parties to the execution of the work in question.

22. In my opinion, had it been a case that non applicant no.3 to the claim petition would have not been engaged to carry out the work in question, it was the primary and sole responsibility of the Zilla Parishad to execute the work in question on its own. It is only for the reason that the non applicant no.1 – appellant herein and non applicant no.2 Grampanchayat were not in a position to work on their own, that they have hired services of non applicant no.3, with whom deceased was working. In view of above, it will be appropriate to uphold the award rendered by the Commissioner as it is. For this, appropriate support can be drawn from the judgments in the matter of Sarjeras Unkar Jadahav and Executive Engineer, Public Works Department (cited supra). Paragraphs 9 and 8, respectively of the above referred judgments are worth to be reproduced herein below :-

“9 . The dispute in this case is regarding the second condition only, there being no dispute that the supply of electricity is the trade or business of respondent No. 2 and

the contractor was engaged for the purpose of that trade or business. Therefore, what is required to be considered is whether painting electric poles is also a work which is ordinarily a part of the trade or business of respondent No. 2 and this requires to be examined in the context of the three decisions relied upon by Shri Chandrachud. No doubt, the Legislature has in its wisdom used the expression "trade or business" in sub-section (1) of Section 12 at two places which could not be without any purpose. In fact, the purpose has been brought out very succinctly in the three decisions relied upon by Shri Chandrachud. However, the safer test would be that if it is ordinarily a part of business of the principal to execute certain work, then ordinarily he will do that work by his own servants and he cannot escape the liability for accident that takes place merely because he has engaged a contractor. Now, in the present case, the trade or business of respondent No. 2 is to supply electricity. One cannot supply electricity without having electric poles. Electric poles are not one or two in number. They are hundreds and thousands having regard to the area of operation of respondent No. 2. In Bombay climate, the poles are likely to get rusted unless painted frequently. It will thus be an ordinary part of respondent No. 2's business to paint the poles if it is interested in supplying electricity continuously and properly. It is for this reason that I am inclined to hold that the contractor was engaged not only for the purpose of respondent No. 2's trade or business, but the activity in which the workman was engaged was ordinarily a part of its trade or business. Accordingly, I further hold respondent No. 2 responsible and liable for compensation under Section 12 (1) of the Workmen's Compensation Act."

“8. Counsel for the appellant contended that deceased was employee of respondent No.3 and the non applicants 1, 2 and 4 have nothing to do with it. He submits that the contract itself is not proved and therefore the appellant does not become the principal. The submission has no force. The documents of contract are suppressed by the appellant. The evidence shows that deceased was working at the Government building at the instance of non applicant No. 1. D. W. 1 Prakash Gandhi admits that his department carries out repairs to government building through contractor. He also admits that the file was opened. It is clear from these admissions that the department and therefore Government is the Principal and non applicant No. 3 is the contractor. Provisions of Section 12 of the Workmen's Compensation Act say that the principal employer shall be liable to pay compensation when the workmen engaged by the contractor suffers an injury or dies during the course of the employment. Learned Judge of the Court below has rightly appreciated the evidence. There is enough evidence to show that the deceased was engaged as a labourer by contractor and contractor was carrying out the work at the instance of the appellant non-applicant No.1. In view of this I find no substance in the appeal. It is dismissed.”

23. In view of above, in my opinion, the award rendered by the Commissioner holding the present appellant jointly and severally responsible for payment of compensation does not suffer from any infirmity and as such, does not call for any interference.

24. So far as the last submission of the present appellant that it was, primarily non-applicant no.3 – contractor who was responsible for payment of compensation is concerned, it is required to be noted that pursuant to Exh.14 there appears to be a contract between the Grampanchayat and the contractor as regards payment of compensation in case of any accident. In view of the said agreement, it is always open for the present appellant and the Grampanchayat to proceed against non applicant no.3 for recovery of the amount as ordered, pursuant to the liability which he has accepted by virtue of the said agreement.

25. In view of the foregoing observations, in my opinion, no case for interference is made out. The appeal being devoid of merit stands dismissed with no order as to costs.

26. In view of dismissal of the appeal, Civil Application No.10752 of 2014 stands allowed in terms of prayer clause (B).

(N.W. SAMBRE, J.)

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