

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4933/2015 & C.M.No.8924/2015 (for stay)**

Judgment reserved on: 18.05.2015

Judgment pronounced on: 20.05.2015

PAL RADIATOR AND OIL COLLER Petitioner
Through: Mr.Anil Kumar Chandel, Advocate.

versus

RAKESH KUMAR AND ORS. Respondents
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition the petitioner has made a request for quashing the impugned orders dated 21.05.2014, 21.02.2013 and 17.09.2013 passed by the Authority under the Delhi Shops and Establishment Act, 1954 (hereinafter referred to as 'the Act').

2. The brief facts of the case are that the petitioner is a partnership firm and running an establishment which is covered under the Act. Its employees filed an application under Section 21 (2) of the Act claiming their due earned wages for the period from 01.08.2012 to 09.09.2012. The Authority under the Act on 08.11.2012 issued a notice to the petitioner through speed

post for 14.12.2012. On 14.12.2012, the Authority again issued notice to the petitioner/respondent through courier for 04.02.2013. On 04.02.2013, the Authority under the Act adjourned the matter for 21.02.2013 awaiting the courier service report. Thereafter, 21.02.2013 the Authority had proceeded ex-parte against the petitioner on the basis of report of service through courier. Thereafter, the Authority under the Act after recording the evidences of the workers, on the basis of material before it, passed the order dated 17.09.2013 whereby the claim of the workmen/respondents was allowed and the management/petitioner was directed to pay the due earned wages of the said period to the workmen/respondents. The claim of the respondents relating to minimum wages for the said period was however rejected by the Authority. The petitioner thereafter moved an application dated 16.12.2013 for setting aside the ex-parte order dated 17.09.2013. The respondents replied the said application vide reply dated 08.01.2014. Vide order 21.05.2014, the Authority dismissed the application of the petitioner for setting aside the ex-parte order dated 17.09.2013. Thereafter the petitioner filed CWP No.8207/2014 challenging the impugned order but withdrew the same with liberty to file a fresh petition along with courier report. Thereafter, the petitioner has filed the present writ petition whereby

he has challenged the order of the Authority on the ground that he was never served of summon and notice of the proceedings initiated before the Authority. It is further contended that the factum of service upon a party is rebuttable presumption and once it is rebutted by the statement of a party coupled with the surrounding circumstances, the Court should give the party a chance to contest. It is further submitted that the petitioner has been denied the right to defend on a technical ground and this has led to the failure to substantive justice. It is further submitted that service by courier is not an effective service and only a deemed status of service and hence the court should allow the party to contest the matter. It is further submitted that there was no document before the Authority to presume the due service upon the petitioner. It is submitted that the petitioner otherwise has a good case on merit. On these facts, it is prayed that the orders dated 21.05.2014, 17.09.2013 and 21.02.2013 may be set aside.

3. I have heard the arguments of Mr. Anil Kumar Chandel, learned counsel for the petitioner and perused the record.

4. It is not disputed by the petitioner that the respondents were not employed or working with them. There is no contention in the writ petition that the salary for the period from 01.08.2012 to 09.09.2012 had been duly

paid by the petitioner to them. No contention has been raised by the petitioner on merit in the present writ petition. It is also apparent that the Authority under the Act had not acted in haste but had repeatedly sent the processes to the petitioner, informing him of the pendency of the matter before it and calling upon him to contest the same. The Authority under the Act has clearly recorded in its order dated 17.09.2013 that despite the summons being sent through speed post and courier for appearance on 14.12.2012, 04.02.2013 and 21.02.2013, the petitioner/respondent failed to appear and participate in the proceedings. An application had been moved by the petitioner for setting aside this ex-parte order before the Authority under the Act and this application was dismissed by the Authority vide its order dated 21.05.2014.

5. From the perusal of this order it is apparent that the concerned Authority has duly applied its mind and after going through the record, did not find any merit in the application and hence, rejected it. Even before this court, the petitioner has failed to point out any fact which can show that the order of the Authority was contrary to the record or the law. The findings of the Authority is based on the facts on record and which fact is that the petitioner stood served by DTDC Courier service and the copy of the track

record was also placed before the court which clearly shows that the courier was duly delivered on 13.02.2013 at 11.18 a.m. to the addressee. There is no dispute to the fact that the petitioner was situated at the address on which the processes were sent. His only contention was that he was in the process of shifting to Sonipat. However, it is not the claim of the petitioner that he had vacated the premises or was not in occupation of the premises on which the processes were sent. His contention that he came to know of the order dated 17.09.2013 from his neighbours clearly shows that he was very much occupying the same premises on which the processes were sent and reported delivered.

6. Since the processes stood duly served, there is no question of deeming service. The Authority has not deemed the due service of the processes. In this case the process was duly served/delivered upon the petitioner as per track record of the courier service which was generated from their system and which belie the chances of any manipulation.

7. In view of these facts, I find no error in the order of the Authority dated 21.5.2014, 17.09.2013 and 21.02.2013 whereby the petitioner was proceeded ex-parte and his application for setting aside the ex-parte order was dismissed.

8. The petitioner has challenged the order dated 17.09.2013 whereby the claim of the respondents was upheld by the Authority and the petitioner was directed to pay the due earned wages under the Act to the respondents. The petitioner has failed to point out any infirmity in the impugned order dated 17.09.2013. The said order is based on the evidences produced before the Authority under the Act. The order also shows that the Authority had applied its mind and had granted the relief to the applicants for which they were entitled to and this fact is very much clear from the factum that the Authority had rejected the claim of the respondents relating to minimum wages. I find no reason to interfere with the impugned order dated 17.09.2013.

9. For the foregoing reasons, the writ petition is dismissed.

C.M.No.8924/2015 (for stay)

10. In view of the dismissal of the writ petition, this application has become infructuous and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

MAY 20, 2015

rb